

TRIBUNAL OF INQUIRY INTO PROTECTED DISCLOSURES MADE UNDER
THE PROTECTED DISCLOSURES ACT 2014 AND CERTAIN OTHER
MATTERS FOLLOWING RESOLUTIONS PASSED BY DÁIL ÉIREANN AND
SEANAD ÉIREANN ON 16 FEBRUARY 2017

ESTABLISHED BY INSTRUMENT MADE BY THE MINISTER FOR JUSTICE
AND EQUALITY UNDER THE TRIBUNALS OF INQUIRY (EVIDENCE) ACT
1921, ON 17 FEBRUARY 2017

SOLE MEMBER: MR. JUSTICE PETER CHARLETON, JUDGE OF THE
SUPREME COURT

HELD IN DUBLIN CASTLE
ON WEDNESDAY, 4TH OCTOBER 2017 - DAY 31

31

Gwen Malone Stenography
Services certify the
following to be a
verbatim transcript of
their stenographic notes
in the above-named
action.

GWEN MALONE STENOGRAPHY
SERVICES

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JUDGE OF THE SUPREME COURT

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1 THE HEARING RESUMED, AS FOLLOWS, ON WEDNESDAY, 4TH
2 OCTOBER 2017:

3
4 MS. LEADER: Our first witness today, sir, is
5 Superintendent Eugene McGovern. 10:04

6
7 SUPERINTENDENT EUGENE MCGOVERN, HAVING BEEN SWORN, WAS
8 DIRECTLY EXAMINED BY MS. LEADER:

9
10 MS. LEADER: Superintendent McGovern's statement to the 10:04
11 Tribunal starts in Volume 1 at page 185 and continues
12 into Volume 2, sir.

13 1 Q. Superintendent McGovern, I wonder could you start your
14 evidence by telling the Tribunal about your career in
15 An Garda Síochána to date. 10:05

16 A. I joined An Garda Síochána 7th of September 1983 and
17 following completion of training I was assigned to
18 Donegal Town Garda Station in February of 1984. I
19 remained there from February '84 to August '84 and went
20 on transfer to Burnfoot Garda Station in the Buncrana 10:05
21 Garda district. I remained there until 1989, I went on
22 transfer to Buncrana Garda Station. I was promoted to
23 the rank of sergeant in October 1991. I returned to
24 Burnfoot Garda Station as a unit sergeant. I remained
25 there until 1993 when I returned to Buncrana Garda 10:05
26 Station to take charge of a unit, also the crime unit
27 and incident room. I went on UN duty from April of
28 1994 to July of 1994, I served with the United Nations
29 in Mogadishu in Somalia. I returned to Buncrana Garda

1 station again in '94 and I left Buncrana on promotion
2 in 1999 to travel to Letterkenny as a newly promoted
3 inspector. I was promoted to the rank of
4 superintendent in 2005, July 2005, and transferred to
5 the Glenties Garda district. I remained there from 10:06
6 2005 to 2009, I went to Milford Garda district as
7 superintendent in charge of the Milford area, and I
8 transferred temporarily from February to July of 2013
9 to the Buncrana Garda district and I went there
10 permanently on 25th October 2013, where I remain to 10:06
11 date.

12 2 Q. Okay. So am I correct in saying that from June 2009 to
13 October 2013 you were the superintendent in charge of
14 Milford with one break when you went to Buncrana from
15 February to July 2013? 10:07

16 A. That would be correct.

17 3 Q. And you were Sergeant McGowan's superior for the
18 relevant time that the Tribunal is interested in, is
19 that correct?

20 A. That would be correct, Chairman. Sergeant McGowan was 10:07
21 attached to Kerrykeel Garda Station and she was the
22 district liaison manager with the HSE or Tusla at that
23 stage.

24 4 Q. I think an incident at Churchill came to your attention
25 on 25th of May 2011, is that correct? 10:07

26 A. The date would have been the 23rd of May 2011,
27 Chairman.

28 5 Q. The 23rd of May. And that incident was in relation to
29 a domestic incident in relation to Andrew Simms and

1 Marisa Simms, is that correct?

2 A. That would be correct. I was notified of the incident
3 at 10:53pm that night where Garda members from the
4 Milford Garda district were called to an incident at
5 Tir Argus, Churchill involving Ms. Simms, her partner 10:08
6 and at that stage Garda Harrison had travelled from
7 Buncrana Garda Station over to liaise with the Garda
8 members at the actual scene or to actually show them to
9 the actual house where the incident had allegedly
10 occurred. 10:08

11 6 Q. And I think it was Garda Michael Shevlin from your
12 notes and your recollection that made you aware of that
13 incident, is that correct? He doesn't remember it now.

14 A. That would be correct. He would have rang me at
15 10:53pm on that particular date and I have a 10:08
16 contemporaneous note in my journal in relation to that
17 particular conversation, Chairman.

18 7 Q. Okay. And a typed version of your notes was circulated
19 yesterday and they appear on page 2455 of the 10:08
20 materials. Now, I don't want to spend too much time on
21 the details of that incident but I think a summary of
22 your involvement in the matter was that you received
23 updates in relation to the incident from members of An
24 Garda Síochána, you directed that an investigation be
25 carried out, that precautions be taken in relation to 10:09
26 the safety of Garda Harrison and Ms. Simms, is that
27 correct?

28 A. That would be correct. I initially spoke to Garda
29 Shevlin at the scene, but I subsequently on the same

1 night and into the following morning spoke to Sergeant
2 Philip Gillespie, who was a unit sergeant attached to
3 Milford Garda Station at that particular time, and he
4 was placed in charge of the actual investigation. I
5 suppose I was briefed in relation to what actually had 10:09
6 occurred, and I suppose, bearing in mind that threats
7 had been made to burn Marisa Simms and Keith Harrison
8 out of their home at Tir Argus and an allegation that a
9 bullet would be put in Keith Harrison, that I took the
10 threats to be serious at that particular time and I 10:09
11 requested a full investigation and inquiry in relation
12 to the incidents.

13 8 Q. Okay. And we have heard from the individual members of
14 An Garda Síochána in relation to the steps they took on
15 foot of your directions, and I think also during the 10:10
16 course of that incident you became aware that Garda
17 Harrison was in a relationship with Ms. Simms, whose
18 brother at that time was awaiting trial in relation to
19 the manslaughter of a member of An Garda Síochána, is
20 that correct? 10:10

21 A. That would be correct. When I spoke to Garda Shevlin
22 on the night in question he made be aware of the actual
23 family relationship between Keith Simms, Marisa Simms
24 and Martin McDermott.

25 9 Q. And you conveyed that to Superintendent English and 10:10
26 also communicated with Chief Superintendent Sheridan in
27 relation to the matter?

28 A. Yes, on the following morning I spoke to both, Chief
29 Superintendent Sheridan and Superintendent English, and

1 at that particular stage when I spoke to Superintendent
2 English he was already aware of the actual incident
3 from the previous night, he had been briefed by one of
4 his unit sergeants who had contacted him on the night
5 in question. So he was familiar with the actual 10:10
6 incident. There was a short conversation in relation
7 to it and the understanding was he was going, liaising
8 with Chief Superintendent Sheridan in relation to the
9 management of the incident and the Garda Harrison at
10 Buncrana. So I had no further involvement in that 10:11
11 aspect of it, Chairman.

12 10 Q. Okay. Now, you followed up on this matter, asking
13 people in your district to ascertain where Garda
14 Harrison was living, isn't that correct?

15 A. That would be correct. Initially Sergeant Gillespie 10:11
16 would have carried out the initial threat assessment in
17 relation to the matter and part of that procedure would
18 have been to involve the services of Sergeant Paul
19 Wallace, crime prevention officer, and from
20 correspondence that were transmitted from my office to 10:11
21 Churchill Garda Station and also to Sergeant Gillespie,
22 I subsequently learned that they were able to make
23 contact with Garda Harrison at the address that had
24 been provided and a request was made on the day for me
25 to provide update, an address for Garda Harrison so 10:11
26 that, in particular, Sergeant Wallace as the crime
27 prevention officer could fulfil his requirements in
28 relation to the passing on of information to Garda
29 Harrison in relation to crime prevention advice.

1 11 Q. Now, I think in the materials at page 272 on the 2nd of
2 February 2012, that you made an inquiry of the
3 superintendent at Ballyshannon. That should come up in
4 front of you, superintendent. And it's "re: Alleged
5 threats made to Marisa Simms and Keith Harrison." 10:12
6 Their address, by Mr. Andrew Simms and you say:

7
8 "With reference to the above the attached
9 correspondence is forwarded for your consideration
10 please. 10:12

11 I would appreciate it if it could be established
12 discreetly where Garda Harrison is resident so that in
13 the event of a repeat of the circumstances that led to
14 this issue in the first place an immediate response can
15 be facilitated. 10:12
16 For your attention please."

17
18 I just want to ask you about that, superintendent, and
19 say the threat by Mr. Simms had happened almost a year
20 previously at that stage, am I right in saying that, 10:13
21 being 23rd of May 2011?

22 A. That would be correct.

23 12 Q. Yes. And I think it was the assessment of the Sergeant
24 Gillespie that neither Ms. Simms nor Garda Harrison
25 wished to pursue the matter or make a complaint and 10:13
26 that the threats, if made at all, weren't serious ones,
27 if you understand what I'm saying. That seemed to be
28 the tenor of what was coming from Sergeant Gillespie in
29 relation to the matter.

1 A. That probably would be a correct evaluation of where
2 Sergeant Gillespie seen the situation. Nevertheless I
3 was dealing with a situation where a threat was made to
4 burn Marisa Simms and her family out of their family
5 home at Tir Argus, we are also dealing with a threat 10:14
6 that was made by Mr. Simms to put a bullet in Keith
7 Harrison's head and by virtue of the nature of those
8 particular threats, and also Sergeant Gillespie had
9 represented on the night in question that Mr. Simms had
10 presented as suicidal, so there was a risk presented 10:14
11 that required to be fully validated. And at that stage
12 the full validation of the actual threat assessment had
13 not been completed. Before this letter was written on
14 29th of November of that particular year, 2011,
15 Sergeant Gillespie had confirmed to me in writing that 10:14
16 he had made attempts on the day to make contact with
17 both Keith Harrison and Marisa Simms at both the
18 address and the phone numbers that had been provided
19 and was unable to do that. So I was aware at that
20 stage Keith Harrison was now based at Donegal Town 10:14
21 Garda Station, so I wrote to the superintendent in
22 Ballyshannon to seek assistance in relation to his up
23 to date residential address.

24 13 Q. Okay. And insofar as it could be said that a lot of
25 resources attention was being devoted towards the 10:15
26 alleged threat made by Mr. Simms and where Garda
27 Harrison resided, maybe this was slightly over the top
28 on your behalf, what would you say to that,
29 superintendent?

1 A. That would be the situation, Chairman. This would be
2 normal common practice in relation to assessments in
3 accordance with the HQ Directive 207 that was assigned
4 to us at that particular time. It would have been
5 normal practice. So, the particular location on the 10:15
6 day would have been provided with passing attention but
7 we also would have required an up-to-date address for
8 both Marisa Simms and Garda Harrison in the event of a
9 repeat occurrence of what occurred on 23rd of May
10 occurring. Like, there was always the potential for an 10:15
11 ongoing domestic situation because the situation
12 between Andrew Simms and Marisa Simms, as far as I was
13 aware on the day, had not been resolved, so there was
14 always potential for a future incident and it was
15 important we would know where to respond to in the 10:15
16 event of getting an emergency call.

17 14 Q. Okay. And did you ever think about asking one of the
18 Gardaí who worked to you, superintendent, to make a
19 direct approach to Garda Harrison and simply ask him
20 where he lived? 10:16

21 A. As I said, Mr. Chairman, I made that approach to
22 Sergeant Gillespie and on the 29th of November he
23 confirmed to me that he was unable to make the relevant
24 contacts with Garda Harrison or Ms. Simms at either the
25 address or telephone numbers as provided, and also 10:16
26 Sergeant Wallace had written to me as a result of an
27 inquiry I had done with him to establish the up-to-date
28 position in relation to his responsibility on the
29 matter; he had indicated that he was unable on the day

1 to make contact with Garda Harrison in relation to the
2 matter. So I had two different sergeants telling me
3 they were unable to locate Garda Harrison at the
4 addresses provided at that particular time, so I had
5 made inquiries with two different members of the force 10:16
6 on the day in relation to the addresses.

7 15 Q. Okay. So a week after writing that letter in relation
8 to Garda Harrison, you had communication with Sergeant
9 McGowan in relation to an anonymous letter?

10 A. That would be correct. I think that was on 9th 10:17
11 February 2012. Sergeant McGowan would have brought it
12 to my attention, an anonymous letter that had been
13 given to her or had been provided to her by the HSE or
14 Tusla in relation to her ongoing liaison with them.

15 16 Q. Okay. Did you speak to Sergeant McGowan about that? 10:17

16 A. I did, yeah. I spoke to Sergeant McGowan in relation
17 to the matter, and I requested Sergeant McGowan to
18 provide me with a copy of the actual document that had
19 been supplied to her by the HSE in relation to the
20 actual alleged incident. 10:17

21 17 Q. Okay. And did you speak to Sergeant McGowan in relation
22 to Garda Harrison's address at that time?

23 A. Well, I was certainly aware at that particular time
24 that I didn't have an address for Garda Harrison and I
25 made her aware that I had previously written to the 10:18
26 superintendent in Ballyshannon for an address in
27 relation to the follow-up threat assessments in
28 relation to the previous incident and that I hadn't at
29 that particular time received a reply. So I made her

1 aware that I would reapply to the superintendent in
2 Ballyshannon and remind him of the fact on the day I
3 had sought previous update address and bring to his
4 attention the actual anonymous letter that had issued
5 and requested further information in relation to that 10:18
6 particular document and in relation to the actual
7 address.

8 18 Q. And did you subsequently get a copy of that anonymous
9 letter from Sergeant McGowan?

10 A. I did. I did, yes. And I would have provided a copy 10:18
11 of it to Superintendent Coen under confidential cover,
12 superintendent Ballyshannon under confidential cover,
13 requesting follow-up in relation to the actual document
14 and in relation to the current address that Garda
15 Harrison was residing at. 10:19

16 19 Q. Okay. And I think that letter to Superintendent Coen
17 is at page 277 of the materials, it should come up in
18 front of you, superintendent. It's dated 14th February
19 2013. And what it says is, it is marked confidential:

20 10:19
21 "Re: Inquiry from the HSE in relation to anonymous
22 letter received referring to the Simms family Milford
23 and Garda Harrison.

24
25 with reference to the above the attached correspondence 10:19
26 from Sergeant McGowan, HSE liaison officer for the
27 Milford Garda district, is forwarded for your
28 consideration, please. This correspondence emulates
29 from the attached anonymous letter received by the HSE.

1 I have referred previous correspondence to your office
2 in respect of Garda Harrison and seeking disclosure of
3 his current residential address, if known. I would
4 appreciate if that correspondence and this new
5 development could be reviewed together and, where
6 possible, the current residential address of Garda
7 Harrison disclosed to this office under confidential
8 cover.

10:20

9 For urgent consideration please."

10 A. Yes, that is the correspondence I would have sent to
11 superintendent Ballyshannon. And I subsequently
12 received a reply to that particular correspondence
13 on -- which is dated 15th February 2012 at my office.

10:20

14 20 Q. Okay. And that correspondence appears at page 280 of
15 the materials. It's a letter dated 15th February from
16 Superintendent Coen, and you will see that he is
17 informing you that:

10:20

18
19 "Confidential inquiries have established that Garda
20 Keith Harrison is currently residing at Glenmakeeran,
21 Ballymaleel, Letterkenny."

10:20

22
23 And it gives details in relation to the accommodation.

24
25 "Very little is known regarding Garda Harrison's
26 personal circumstances, but he has stated that he is
27 residing with his partner, Marisa Simms, and her
28 children. He states he is not aware of any barring
29 order in existence in respect of Garda Harrison by his

10:20

1 ex-wife."

2

3 And that relates to something that is contained in the
4 anonymous letter, isn't that correct?

5 A. That would be correct, Chairman. 10:21

6 21 Q. "There is an extensive personnel file at district
7 office Ballyshannon for Garda Harrison should you
8 require to pursue same in course.
9 For your information, please."

10

10:21

11 And I think he had received that information from
12 Sergeant Durkin, is that correct?

13 A. That would be correct, Chairman.

14 22 Q. And that letter from Sergeant Durkin appears at page
15 281 of the materials, just can you confirm that that is 10:21
16 the case?

17 A. That's correct, Chairman.

18 23 Q. Now, previously, on the 9th of February, when you had
19 been discussing the matter with Sergeant McGowan, the
20 issue of a formal referral was discussed. That would 10:22
21 appear from a reference in your notes at page 2457 of
22 the materials. You see that Sergeant McGowan, in
23 bullet-points, these are your notes:

24

25 "Met with the HSE, handed over anonymous letter." 10:22

26

27 Sergeant McGowan is telling you this, is that correct?

28 A. That's correct, yes.

29 24 Q. "will be calling with Marisa Simms' husband. will also

1 call with her when they get an address for her. When
2 they get an address they should let us know. Are they
3 sending formal referral? Don't know."

4
5 And if you could explain, please, what the reference to 10:22
6 "formal referral" is in those notes, superintendent.

7 A. That would be a situation where the HSE or Tusla would
8 have referred a matter to us for a follow-up inquiry or
9 a possible criminal investigation in relation to the
10 allegations that were contained in the actual document. 10:23

11 25 Q. Okay. But there was nothing forthcoming from the
12 HSE --

13 A. No.

14 26 Q. -- are you satisfied in relation to that?

15 A. That would be correct, Chairman. We received no 10:23
16 official correspondence from Tusla or the HSE in
17 relation to that particular anonymous letter.

18 27 Q. Okay. Now, I think in relation to the information you
19 had received from Superintendent Coen, you passed this
20 to Sergeant McGowan, is that correct? 10:23

21 A. That would be the correct -- that would be correct,
22 Chairman. I brought it to the attention of Sergeant
23 McGowan so that she could update the HSE in relation to
24 the information that had been provided. And I also
25 would have brought it to her attention, because when we 10:23
26 received the address from Ballyshannon the address
27 indicated that Garda Harrison was now living in the
28 Letterkenny district, policing district, so as a
29 result, then, another HSE liaison manager, Sergeant

1 walsh of Letterkenny, would now have been the relevant
2 sergeant who would have responsibility for the area now
3 where Garda Harrison was residing or possibly Marisa
4 Simms and her children also. So for that particular
5 reason, I would have referred that particular 10:24
6 correspondence to chief superintendent Letterkenny for
7 his attention, for the attention of Sergeant walsh but
8 also for the attention of the superintendent at
9 Letterkenny, I required him to be informed so that in
10 the event of a follow-up situation, as previously 10:24
11 indicated, another emergency callout, in relation to
12 the address where both parties were residing, that the
13 superintendent in Letterkenny and personnel at that
14 particular district would be aware of the particular
15 location where they required to respond to in the event 10:24
16 of an emergency.

17 28 Q. Okay. And your letter to Sergeant McGowan appears at
18 page 283 of the materials, it's dated the 29th of
19 February 2012. And you explain to her that you have
20 carried out "-- an inquiry with superintendent 10:24
21 Ballyshannon who has identified the current residential
22 address of Keith Harrison, Marisa Simms and her
23 children. You should now liaise with the HSE and
24 provide them with the address as set out. In addition,
25 you should consult with your counterpart in Letterkenny 10:25
26 and make them aware of the information received and the
27 response which will be undertaken by the HSE.
28 For your attention, please. And report in due course."
29

1 And you enclose with that letter a copy of the letter
2 from Sergeant Durkin to the superintendent in
3 Ballyshannon, which contained the information which was
4 needed, is that correct?

5 A. That would be correct, Chairman. 10:25

6 29 Q. And that is at page 284 of the materials.

7 A. That would be correct. Our counterpart, as referred
8 to, in Letterkenny would have been Sergeant Walsh, as I
9 indicated earlier.

10 30 Q. And I think Sergeant McGowan reported back to you. I 10:25
11 think the letter is undated, but it does appear at page
12 286 of the materials. She reports back to you of her
13 meeting with Nora Roarty and Una Coll of the HSE and
14 what had transpired at that meeting, and we have
15 already heard from Sergeant McGowan in relation to 10:26
16 that. But you received an update in respect of the
17 situation.

18 A. That would be correct, Chairman. And bearing in mind
19 that it was now within the operational area of the
20 superintendent at Letterkenny and bearing in mind the 10:26
21 correspondence had been sent on the 29th of February to
22 chief superintendent Letterkenny for his information,
23 there would have been no requirement for any further
24 follow-up from the Milford Garda district or from
25 Sergeant McGowan as the district liaison manager with 10:26
26 the HSE.

27 31 Q. And I think you have already referred to telling the
28 chief superintendent in Letterkenny about it and that
29 correspondence appears at page 288 of the materials,

1 when you wrote to the chief superintendent in
2 Letterkenny. Yes, there it is.
3
4 "Re: Inquiry from the in relation to anonymous letter
5 received regarding the Simms family and Garda Harrison. 10:27
6
7 With reference to the above, the attached report is
8 forwarded for your information please. It would appear
9 that Garda Harrison and Marisa Simms are not currently
10 in a relationship." 10:27
11
12 And that report you were referring to was the report
13 you received from Sergeant McGowan, is that it?
14 A. That would be correct, Chairman.
15 32 Q. Now, that kind of deals with your dealings with the 10:27
16 anonymous letter. You spoke to Sergeant McGowan about
17 it, you also had communication with the chief
18 superintendent in Letterkenny. Did you speak to
19 anybody else in relation to the anonymous letter or in
20 relation to Garda Harrison's domestic matters at that 10:27
21 time?
22 A. No, Chairman.
23 33 Q. Okay. Now, during the course of Sergeant McGowan's
24 inquiries so as she could establish Garda Harrison's
25 current address, it came to her attention that a number 10:27
26 of Pulse checks had been carried out by Garda Harrison
27 in relation to Marisa Simms?
28 A. That would be correct, Chairman.
29 34 Q. Did you become aware of this?

1 A. Yeah, I was made aware of that particular situation by
2 Sergeant McGowan. As far as I could recall, it was
3 13th of February 2012, that is the date that was on the
4 document that was printed, and as far as I can recall
5 Sergeant McGowan brought it to my attention basically 10:28
6 forthwith after she discovered what the situation in
7 relation to the ongoing checks on the Pulse system.

8 35 Q. Okay. And you brought that to the attention of the
9 chief superintendent, who at that time was Chief
10 Superintendent Sheridan in Letterkenny, is that 10:28
11 correct?

12 A. That would be correct, Chairman. Again it was 29th of
13 February 2012, and I wrote a further letter to the
14 chief superintendent in relation to that particular
15 situation, and bringing the fact to his attention. 10:28

16 36 Q. Okay. And that letter appears at page 293 of the
17 materials. It's dated 29th February 2012. It's again
18 headed:
19
20 "Alleged threats made to Marisa Simms and Keith 10:29
21 Harrison by Mr. Simms.
22
23 With reference to above and further to previous
24 correspondence in this matter to your office, please
25 find attached a printout from Pulse which sets out 10:29
26 personal checks which have been conducted on Marisa
27 Simms.
28
29 As you will note, the checks were conducted by her

1 current partner, Garda Keith Harrison, Donegal Town.
2 The reasons for these checks have not been set out and
3 may well highlight a breach of Data Protection
4 legislation by Garda Harrison. The extent of these
5 inquiries were discovered following the most recent 10:29
6 contact by the HSE with Sergeant McGowan relevant to
7 Ms. Simms' children.

8
9 Forwarded for your consideration please."

10
11 Now, did you do anything else in relation to those 10:29
12 checks on Pulse? Did you speak to Garda Harrison or
13 anybody else bar Sergeant McGowan in relation to them?

14 A. No. No, Chairman, I referred the matter to chief
15 superintendent Letterkenny for his attention. 10:30

16 37 Q. Okay. And what was your purpose in referring that
17 matter to the chief superintendent?

18 A. As indicated in the correspondence, Chairman, I was of
19 the view that they may well be in breach -- his
20 inquiries may well be in breach of the Data Protection 10:30
21 legislation and his entitlement to make the inquiries
22 that had been presented, so I referred them to chief
23 superintendent Letterkenny to have the matter reviewed.

24 38 Q. And it wouldn't have been your responsibility as a
25 person attached to the Milford district to take any 10:30
26 further steps in relation to the matter?

27 A. Once I was of the view that there may well be either
28 some form of a breach of the actual particular
29 legislation or a breach of the Garda policy in place in

1 relation to that particular matter, once I referred the
2 matter to chief superintendent Letterkenny it was a
3 decision for that office to make in relation to what
4 further follow-up attention to the matter was required.

5 39 Q. Okay. Now, I think you left the Milford district from 10:30
6 February to July of 2013, you went to Bunrana for a
7 period of time, is that correct?

8 A. That would be correct, Chairman. I was temporarily
9 allocated to Bunrana for that particular period.

10 40 Q. Okay. And you had some dealings with Garda Harrison in 10:31
11 relation to matters which are not relevant to the
12 Tribunal, but insofar as they have been referred to,
13 it's referred to a GSOC reference in relation to a road
14 traffic matter on 17th May 2013?

15 A. That would be correct. Well, they were indirect 10:31
16 contacts in relation to Garda Harrison. As acting
17 chief and also the superintendent on the day in
18 Bunrana I was made aware of a collision that Garda
19 Harrison had been involved in and a deterioration in
20 the actual health of the other party involved, and I 10:31
21 subsequently made a referral under section 102 of the
22 Garda Síochána Act 2005 to GSOC in relation to the
23 matter.

24 41 Q. If I could bring you forward then to the 24th September 10:31
25 2013, you again received a telephone call from Sergeant
26 McGowan in relation to Garda Harrison. If you could
27 tell the Tribunal about that, please. You can refer to
28 your notes, I think it may be of -- the 24th September,
29 I beg your pardon. It's at page 2458 of the materials,

1 the typed notes might be of assistance to you.

2 A. Yes. I received a call from Sergeant McGowan on 24th
3 September 2013. She made me aware that she had
4 received contact from Sergeant David Durkin, Donegal
5 Town, in relation to ongoing domestic related issues 10:32
6 between Garda Harrison and his partner, Ms. Simms. And
7 there was an indication from Ms. Simms through Sergeant
8 Durkin that she proposed on the day to put Garda
9 Harrison out of the house at Churchill where they were
10 currently resident. 10:32

11 42 Q. And where did yourself and Sergeant McGowan leave that
12 matter at on 24th September?

13 A. We were unaware of where the exact address of Garda
14 Harrison's house was at that particular time in
15 Churchill, so I left the matter with Sergeant McGowan 10:33
16 to try and discover where the actual location of the
17 actual property was.

18 43 Q. Okay. I think then on the 27th September, three days
19 later, you spoke to Chief Superintendent Terry McGinn
20 in relation to both Ms. Simms and Garda Harrison. And 10:33
21 that is on page 2459 of the materials, your notes,
22 superintendent.

23 A. Yeah, that would be correct.

24 44 Q. Now, if you could explain to me, please, how that
25 meeting or, was it a, telephone call came about? Was 10:33
26 it a planned one?

27 A. No. It was a phone call that I would have made myself
28 to chief superintendent Letterkenny. I was concerned
29 in relation to the issues that had been raised with me

1 in relation to domestic related matters between Garda
2 Harrison and Ms. Simms and I spoke to chief
3 superintendent in relation to the matter.

4 45 Q. Okay. Well, in one way, Superintendent, it might
5 appear that they were very high level discussions in 10:34
6 relation to what at that time was potentially a
7 domestic dispute. Why is it you spoke to the chief
8 superintendent in Letterkenny in relation to the
9 matter?

10 A. Well, there had been other reported incidents involving 10:34
11 Garda Harrison and Ms. Simms, and for that particular
12 reason I was concerned that there was a catalogue of
13 domestic related incidents developing between a serving
14 Garda member and Ms. Simms, so for that reason I felt
15 it prudent on the day that the matter should be brought 10:34
16 to the attention of chief superintendent Letterkenny to
17 see what, in fact, follow-up attention the matter would
18 require.

19 46 Q. Okay. And when you say there had been a catalogue of
20 incidents at that stage, what catalogue are you 10:35
21 referring to?

22 A. Well, there had been the incidents on the 1st of April
23 2013, and now this renewed situation in relation to a
24 domestic situation. So for that particular reason I
25 felt that there was a developing situation based on 10:35
26 what had been represented by Sergeant Durkin to
27 Sergeant McGowan and that it may well require some form
28 of an immediate focus.

29 47 Q. Okay. How were you aware of the incident, the 1st of

1 April, that is the Bogle or Jim Quinn incident, if we
2 can categorise it that way, how did you know about
3 that?

4 A. I would have been -- I would have been in Buncrana at
5 the time, but as far as I can recall Inspector 10:35
6 Harrison, who was covering for me in Milford for my
7 absence on the day, would have made me aware of that
8 particular incident.

9 48 Q. Inspector?

10 A. Michael Harrison. 10:36

11 49 Q. Was that by way of a briefing, a written report or --

12 A. No, it would have been just by way of passing
13 conversation during the course of normal business on
14 some particular day.

15 50 Q. Okay. Did you remember that in September? 10:36

16 A. Yes, I would have -- I would have been acutely aware of
17 it, yes, in September.

18 51 Q. Okay. So you spoke to Chief Superintendent McGinn, and
19 what came out of that particular telephone call,
20 superintendent? 10:36

21 A. She undertook to supply me with the actual reports
22 which I wouldn't have had at that particular time in
23 relation to issues surrounding Garda Harrison and
24 Marisa Simms that had been reported on the day at
25 Letterkenny Garda Station, so she supplied me with a 10:36
26 copy of those particular reports. And we subsequently
27 spoke later on, on that particular evening at 4:40pm in
28 relation to the matter and she made me aware that she
29 proposed to appoint Inspector Goretta Sheridan, who was

1 a newly promoted inspector and had arrived at
2 Letterkenny to actually carry out a review of the
3 catalogue of incidents, to see what further attention
4 it may well require.

5 52 Q. Okay. So the reports that you had at that stage were 10:37
6 the reports in relation to the Jim Quinn incident in
7 April 2013 and Sergeant Durkin's reports in relation to
8 his phone calls from Rita McDermott, is that correct?

9 A. That would be correct, yes.

10 53 Q. Okay. Prior to this had you been aware of 10:37
11 Mrs. McDermott's conversations with Sergeant Durkin?

12 A. I suppose I may well have been aware of them through
13 the conversation that Sergeant McGowan had with
14 Sergeant Durkin in relation to the ongoing issues. I
15 was aware that she was in contact with Sergeant Durkin 10:37
16 in relation to the matter.

17 54 Q. And in relation to the proposal to appoint Inspector
18 Goretta Sheridan to review the matter, what was your
19 understanding of the purpose of that? It was a review,
20 number one, but to what end, superintendent? 10:38

21 A. Inspector Sheridan would have been, she would have been
22 totally independent on any of the actual issues that
23 would have occurred. She came newly on promotion to
24 the Donegal division, so the chief superintendent's
25 view, as far as I recall, was that she would have a 10:38
26 fresh set of eyes and an independent view in relation
27 to the matter and she wanted her to have a look at the
28 actual catalogue of incidents, or the growing catalogue
29 of incidents in relation to domestic -- alleged

1 domestic related incidents between Garda Harrison and
2 Marisa Simms.

3 55 Q. And that was on Friday the 27th September and the
4 matter was to rest there until the following Monday, is
5 that correct? 10:38

6 A. That's correct, yes. That is the note I made in
7 relation to it.

8 56 Q. Okay. Now, I think on the 30th, which was the
9 following Monday, you spoke again with Sergeant McGowan
10 in relation to Garda Harrison and Marisa Simms and 10:39
11 domestic disputes, is that correct?

12 A. Yeah, that would be correct.

13 57 Q. And what was that conversation about, superintendent?

14 A. I suppose, I would have been aware at that stage that
15 there was a pending wedding in the McDermott family and 10:39
16 concerns had been raised in relation to that particular
17 situation and Garda Harrison. And also on the day that
18 the situation that, again that Marisa Simms proposed to
19 on the day put Garda Harrison out of the accommodation
20 at Churchill. 10:39

21 58 Q. Okay. Do you remember at that stage was there any
22 reference to Paula McDermott speaking to the guards in
23 relation to the ongoing domestic situation with regard
24 to Garda Harrison and Marisa Simms, or was that later
25 on? 10:40

26 A. I think that may well have been later on. That would
27 have been on the following day, 1st of October 2013.

28 59 Q. Okay. Well, it would appear you spoke to Sergeant
29 Forkin later on in the day in relation to the matter,

1 can you remember that?

2 A. I did. Because of what was represented, I alerted
3 Sergeant Forkin, who was the sergeant in charge at
4 Milford Garda Station, in the event of a situation
5 arising in relation to Garda Harrison and Ms. Simms in 10:40
6 Churchill, that in the event of them getting a call
7 they would be aware of a possible developing situation
8 and they would be in a position to respond.

9 60 Q. And it would appear at that stage you made him aware of
10 the report of Paula, that Paula had made to the guards? 10:40

11 A. Yes. At that particular stage I would have been aware
12 of the actual report that Paula had made and the
13 alleged threats that had been made against Marisa Simms
14 and her sister to burn them out or bury them in
15 relation to that alleged threat. I was aware of that 10:41
16 threat, it was contained in a report that had been
17 provided by Garda McMahon.

18 61 Q. Yes, and he has given his evidence in to the Tribunal
19 in relation to a conversation he had with Paula
20 McDermott. Did this worry you in any way, 10:41
21 Superintendent? It would seem to be an escalation of
22 what had happened previously.

23 A. It certainly added to the catalogue of incidents that
24 we became aware of, but at that particular time the
25 situation had been represented to us by a third party, 10:41
26 we didn't actually have any statement of complaint or
27 anything from Marisa Simms in relation to the matter,
28 so at that stage Sergeant Durkin was in liaison with
29 Paula McDermott in relation to the matter and he was --

1 as was Sergeant Collins after the fact, and they were
2 actually dealing with Paula McDermott in relation to
3 it.

4 62 Q. Okay. Now, in your conversations with Sergeant McGowan
5 in relation to the matter, it seems you mentioned 10:42
6 liaising with the HSE, and I wonder could you explain
7 to the Tribunal how that came up.

8 A. Well, from the previous incidents that occurred, I
9 would have been aware particularly in relation to the
10 anonymous letter, that the HSE were aware of the actual 10:42
11 Harrison/Simms situation, and issues that had been
12 represented to them in relation to the children. So,
13 because of the actual renewed incidents and the alleged
14 threats on the day that were represented on the day to
15 Garda Mahon and Sergeant Durkin I spoke to Sergeant 10:42
16 McGowan and I advised that it may well be a situation
17 that required to be notified to the HSE in relation to
18 the actual developing situation.

19 63 Q. Okay. Was any decision made at that stage to liaise
20 with the HSE or to advise them? 10:43

21 A. No. That was the only conversation we had in relation
22 to it. And at that particular point no formal referral
23 was actually made in relation to it.

24 64 Q. Okay.

25 A. There was a subsequent formal referral made as a result 10:43
26 of the actual statement of complaint that was received.

27 65 Q. Okay. And to your knowledge, was any informal referral
28 made or were there any informal communications with the
29 HSE at that stage in relation to the matter?

1 A. I'm not aware of that situation, Chairman. I am not
2 aware of whether actually any contact was actually made
3 as a result of that conversation that I had with
4 Sergeant McGowan.

5 66 Q. Okay. Did you make any contact with anybody in the HSE 10:43
6 in relation to the matter at that stage?

7 A. No, Chairman.

8 67 Q. Now, what else did Sergeant McGowan say to you during
9 that conversation?

10 A. Well, we would have -- she would have spoken in 10:44
11 relation to the developing situation in relation to the
12 wedding and I would have been aware that there was
13 concerns being raised by Paula McDermott that Garda
14 Harrison may well interfere with the wedding that was
15 to take place over the following weekend and she raised 10:44
16 concerns in relation to that particular situation. So
17 as a result, I would have -- I asked Sergeant McGowan
18 to liaise with Sergeant McClafferty, who was the
19 sergeant in charge of the actual area where the actual
20 wedding reception was to take place, so that we would 10:44
21 be aware of where the reception was and in the event of
22 an incident occurring that was represented to us that
23 may occur, that at least on the day we would be aware
24 of it and we would be in a position to respond, should
25 the need arise. 10:44

26 68 Q. Okay. Now, I think on that particular day, your diary
27 would indicate in any event, and the entries which
28 appear at page 2459 and 2460 of the materials, that you
29 spoke to Sergeant McGowan on a number of separate

1 occasions on that day in relation to concerns you had
2 regarding the wedding of Paula McDermott and an ongoing
3 domestic situation in relation to Garda Harrison and
4 Marisa Simms?

5 A. That would be correct, Chairman. 10:45

6 69 Q. Okay. And that, the last conversation you had with
7 Sergeant McGowan was -- sorry, I am just after -- it
8 was late in -- it was in the evening time, in any
9 event, on that day.

10 A. Yes, 7:58. My notes would indicate the last time I 10:45
11 spoke to Sergeant McGowan on that particular date was
12 at 7:58pm. She already had made some inquiries in
13 relation to the matter, she had spoken to Sergeant
14 Durkin and she was aware where the wedding was to take
15 place and she had made some inquiries in relation to 10:46
16 the working arrangement for Garda Harrison on the days
17 in question in the lead-up to the actual wedding.

18 70 Q. And the first time you spoke to her was at 12:13 that
19 day, and that diary entry appears at page 2459 of the
20 materials. 10:46

21 A. Yes, that would be correct.

22 71 Q. Now, if I could take you to that diary entry, and it
23 would appear that, it says: "30/9/2013. Sergeant
24 McGowan re GSOC." I wonder could you explain to me
25 what that reference is to, superintendent? 10:46

26 A. You see, "re GSOC" that might not necessarily have
27 referred to the actual conversation that we were having
28 in relation to --

29 72 Q. In relation to Garda Harrison?

1 A. I may well have omitted to redact that word out of it.
2 There was no issue or question in relation to GSOC and
3 Garda Harrison on this particular situation, so that is
4 probably just a word I would have possibly spoken to
5 her in relation to some matter on the day, some ongoing 10:47
6 investigation in relation to GSOC, but it wasn't
7 relevant in any form or fashion to Keith Harrison or
8 any of the ongoing inquiries.

9 73 Q. Are you satisfied yourself in relation to that?
10 A. Yes, very satisfied, Chairman. It's not relevant. 10:47

11 74 Q. And I think you have your original diary should people
12 need to look at it --
13 A. Yes, I have them there, yes.

14 75 Q. -- later on. Now, that brings us to the next day, the
15 1st October and it was on that day that Paula McDermott 10:47
16 spoke to Sergeant Collins in relation to the matter?
17 A. That would be correct.

18 76 Q. Now, I think you spoke to both Sergeant McGowan and
19 Sergeant Collins on that day in relation to Garda
20 Harrison? 10:47
21 A. That would be correct.

22 77 Q. And if you could tell the Tribunal about those
23 telephone conversations -- or conversations,
24 face-to-face or telephone, whichever they were?
25 A. Basically, the conversation would have been in relation 10:48
26 to, number one, the circumstances surrounding what had
27 been represented in relation to the wedding and, number
28 two, in relation to the actual alleged threats that had
29 been represented by Paula McDermott in relation to

1 Marisa Simms and liaising that was taking place between
2 Sergeant Collins and the McDermotts in relation to a
3 follow-up written complaint in relation to the matters.
4 78 Q. Okay. And I think also on that date you seem to have
5 received the written report that Garda Mahon had 10:48
6 prepared in relation to his conversation with Paula
7 McDermott, is that correct?
8 A. That would be --
9 79 Q. That appears at page 323 of the materials.
10 A. That would be correct. I received it, as far as I 10:48
11 recall, from Inspector Kelly.
12 80 Q. Yes.
13 A. In Letterkenny.
14 81 Q. Yes.
15 10:49
16 "Report: Garda Harrison
17
18 Chief
19 The attached is forwarded for your information. As
20 discussed you will be apprised of the developments. 10:49
21 David."
22
23 And that is sent to Chief Superintendent McGinn and
24 you, Superintendent McGovern, is that correct?
25 A. That would be correct. 10:49
26 82 Q. Was that the first time you had seen that particular --
27 you were aware of the report I think but, had you seen
28 it before?
29 A. No, I think that may well have been the first time I

1 would have actually seen the actual report that was
2 written -- that was prepared by Garda Mahon.

3 83 Q. Okay. And also on that date Sergeant Collins emailed
4 you the report relating to his telephone conversation
5 with Paula McDermott, is that correct? And that would 10:49
6 appear at page 327 of the materials. It's probably bad
7 enough quality print, superintendent. It would appear:
8 "From: Collins, James.
9 Sent: 1st October 2013 at 22:55."
10 Five to eleven. 10:50

11 A. That's correct, he forwarded me a report in relation to
12 the matter, yes.

13 84 Q. Yes.

14 A. And --

15 85 Q. He says: 10:50
16
17 "Superintendent/Inspector/Sergeant
18 Attached report relating to my phone conversation with
19 Paula McDaid --"
20 10:50
21 That is a mistake on his behalf, he has clarified that.
22
23 "-- this evening as per conversation with Sergeant
24 McGowan.
25 10:50
26 I will be in Letterkenny station tomorrow as I have to
27 attend a HSE meeting and accordingly, I will speak with
28 inspectors Kelly and Sheridan with regard to the
29 matter.

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A hard copy of the report will be forwarded."

And essentially, he is setting out his dealings with Paula McDermott on that day in relation to the reports she'd made in relation to the threat, the burn and bury threat? 10:50

A. That would be correct. And she also would have outlined the situation where Ms. Simms had called to the actual house at Churchill in that there and had spoken to Garda Harrison in relation to -- well, there was an issue in relation to whether in fact on the day the matter had been reported to An Garda Síochána. 10:51

86 Q. Okay. And what was your impression about whether Marisa at that stage would make a statement or not? Did you read anything into Sergeant Collins' opinion in relation to the matter or anything like that? 10:51

A. The reports were coming from Paula McDermott so it certainly suggested at that stage that she was concerned on the day that Marisa may not have been aware of the fact on the day she was bringing the matters to the Garda attention, so it required a follow-up with Marisa Simms in relation to the matter. But Paula was concerned on the day that nothing would happen in relation to the situation until after the actual wedding. 10:51 10:52

87 Q. Okay. Then I think again on the 3rd October, which was the day before Paula McDermott's wedding, you had a conversation again with Sergeant McGowan in relation to

1 Garda Harrison, is that correct?

2 A. That would be correct. And at that stage it was
3 indicated to me that they had spoken to Marisa Simms,
4 Sergeant Collins and Inspector Sheridan, and that she
5 had indicated that she was agreeable to come in on 10:52
6 Sunday, 6th October 2013 to make a complaint in
7 relation to the matter, and a complaint in relation to
8 the events of 28th September 2013.

9 88 Q. And did you know at that stage that Rita McDermott, her
10 mother, had made a statement to the guards? 10:52

11 A. All I can say is I certainly hadn't seen a statement
12 from Rita McDermott in relation to the matter.

13 89 Q. You can't remember?

14 A. No. But I certainly hadn't seen a statement made by
15 Rita McDermott in relation to the matter, no. 10:53

16 90 Q. Now, in relation to the entry there about Sergeant
17 Collins speaking with Marisa, we know he left a
18 voicemail message the day before on Marisa Simms'
19 phone. Were you under the impression that he had
20 spoken face-to-face with her? 10:53

21 A. That was my understanding -- well, my understanding,
22 they had spoken to her. I don't know whether
23 face-to-face --

24 91 Q. On the phone?

25 A. Certainly -- 10:53

26 92 Q. An interaction?

27 A. My understanding, that there was -- yeah, there was
28 personal contact made with Marisa Simms in relation to
29 the matter. It was her that had given the undertaking

1 to come to Letterkenny Garda Station on Sunday, 6th
2 October.

3 93 Q. Okay. Now, from a policing point of view,
4 superintendent, what was your concern and your ongoing
5 involvement with the matter? It wasn't -- Garda 10:53
6 Harrison wasn't attached to your district, so I wonder
7 if you could explain to the Tribunal why, from a
8 policing perspective, you were discussing the matter
9 and keeping a close eye on what was happening in
10 relation to Ms. Simms and Garda Harrison at this time. 10:54

11 A. I suppose there were two issues of concern, I suppose;
12 there was the immediate issue of the wedding over the
13 weekend and the possibility that was represented to us,
14 that Garda Harrison may well cause a disruption at the
15 actual wedding due to the fact on the day he hadn't 10:54
16 been invited to the wedding, and number two, on the day
17 the actual seriousness of the alleged threats that had
18 been made and the allegations in relation to the
19 alleged threats, they would have occurred in my
20 district so the responsibility in relation to follow-up 10:54
21 and inquiries in relation to that particular aspect
22 would have rested with me.

23 94 Q. Okay. Now, I think things rested there until the 5th
24 October, and you again spoke with Sergeant McGowan in
25 relation to Garda Harrison, is that correct? The diary 10:54
26 entries appear at the bottom of page 2460 of the
27 materials.

28 A. Yes. That's in relation to a different matter. That
29 was in relation to an alleged threat that was received

1 on the 4th October.

2 95 Q. Okay. And that related not to the wedding but to
3 another threat received by --

4 A. By Keith Harrison.

5 96 Q. He was the recipient of the threat? 10:55

6 A. That would be correct, Chairman. And it was a matter
7 on the day was dealt with by the superintendent on
8 call, who was Superintendent English on that particular
9 weekend. So it was an incident that was dealt with
10 over a weekend period by the superintendent on call. 10:55

11 97 Q. Okay. And was it normal for you to be made aware of
12 matters like that that occurred?

13 A. It would be, it would indeed. I would have been copied
14 by Superintendent English in relation to what follow-up
15 he had directed in relation to that particular threat 10:55
16 and the assessment of it.

17 98 Q. Okay. And I think there were other follow-ups on the
18 6th October in relation to those threats to Garda
19 Harrison, is that correct? That would appear to be the
20 case from page 2461 of the materials. 10:56

21 A. That would be correct. I mean on 6th of October I
22 would have spoken to Superintendent English in relation
23 to the actual situation and the alleged threats and the
24 security arrangements that were in place, and as a
25 consequence I did receive an email from chief 10:56
26 superintendent Letterkenny advising on the day that the
27 actual security measures that had been put in place in
28 relation to Garda Harrison and his residence should be
29 continued.

1 99 Q. Now, did you at that stage know that Marisa Simms was
2 in Letterkenny Garda Station giving a statement -- or
3 about to go into Letterkenny Garda Station?
4 A. No. All I was aware of at that particular time was
5 that there had been an arrangement made with Marisa 10:56
6 Simms to come into Letterkenny Garda Station on Sunday
7 6th October and that there -- and I had received a call
8 from Sergeant McGowan and I had given her authorisation
9 on the day to attend at Letterkenny Garda Station to
10 assist Inspector Sheridan with the taking of that 10:57
11 particular complaint.

12 100 Q. Okay. And did you speak with Chief Superintendent
13 McGinn in relation to that interview that Sergeant
14 McGowan was going to carry out with Marisa Simms?
15 A. I am almost 100 percent sure no is the answer. No. 10:57

16 101 Q. Okay. So was it simply a manpower matter that you gave
17 Sergeant McGowan permission to go to Letterkenny?
18 A. It would have been a situation that Inspector Sheridan,
19 who had been assigned the responsibility for the review
20 of the actual incidents involving Marisa Simms and 10:57
21 Keith Harrison, she -- it would not have been prudent
22 or appropriate for her on the day to take a statement
23 of that particular nature on her own and Sergeant
24 McGowan, as the actual district liaison manager and who
25 would have been familiar on the day with the 10:57
26 circumstances involving Marisa Simms, Keith Harrison
27 and their family, she requested on the day permission
28 on the day to assist Inspector Sheridan with that
29 particular taking of the statement of complaint and I

1 authorised that. I believed it to be correct and a
2 prudent thing to do.

3 102 Q. Okay. And I think in the morning of the 7th October
4 2013, Sergeant McGowan updated you as to what had
5 happened in Letterkenny Garda Station the day before? 10:58

6 A. That would be correct. I was actually on, I would have
7 been on annual leave on that particular day but at
8 9:27am on that date, I did receive a very short phone
9 call from Sergeant McGowan in relation to the matter.
10 Now, the note I had was that she had recorded, they had 10:58
11 recorded an extensive statement, 28 pages, from Marisa
12 Simms in relation to the matter - now, I now know the
13 statement was actually longer than that - and that it
14 had contained allegations of assaults, threats to kill,
15 criminal damage and harassment. 10:59

16 103 Q. Okay. And did you take any steps that day in relation
17 to the matter, communicate with anybody else in the
18 guards in relation to the matter?

19 A. No. I didn't speak to anybody else on that particular
20 day in relation to it. 10:59

21 104 Q. Okay. And I think insofar as you note a conversation
22 with Superintendent English that evening, it was in
23 relation to the threats received by Garda Harrison?

24 A. It would have been in relation to the threats received
25 by Garda Harrison and I would have made him aware of 10:59
26 the fact on the day that a statement of complaint had
27 now been made by Marisa Simms in relation to a
28 catalogue of incidents that was alleged to have
29 occurred between herself and Keith Harrison.

1 105 Q. Okay. And Superintendent English, his area of
2 responsibility was managing the threats to Garda
3 Harrison, am I correct in saying that?

4 A. Well, at that particular stage once Superintendent
5 English would have come off call for the weekend, the 10:59
6 overall responsibility on the day fell -- for the
7 management of the actual threat related situation would
8 have passed back to me.

9 106 Q. So what was the purpose of speaking to Superintendent
10 English about the matter, so? 11:00

11 A. It was just by way of update in relation to the
12 situation that had occurred at the weekend, just to
13 update him of the fact on the day, he would have been
14 aware as well being the superintendent on call that
15 there was a possibility of an incident occurring on the 11:00
16 day at the Chúirt Hotel at the actual wedding
17 reception. So he would have been familiar with some
18 aspects of what was represented as may have occurring
19 on that weekend, but he wasn't to be aware of a threat
20 that was to be made to Garda Harrison over that 11:00
21 particular weekend.

22 107 Q. Now, we know the next day, the 8th October, you
23 attended a conference in relation to the matter, when
24 were arrangements made in relation to that conference?
25 The conference was in relation to the statement of 11:00
26 Marisa Simms.

27 A. Well, I was off on leave on the 7th October and I
28 can't -- I can't say whether I received a call on the
29 7th October or whether I received it in the early

1 stages of the morning of the 8th October, but certainly
2 I was requested to attend a conference at Letterkenny
3 Garda Station on the 8th October in relation to the
4 matter by Chief Superintendent McGinn.

5 108 Q. Okay. And did Chief Superintendent McGinn directly 11:01
6 contact you in relation to requesting your attendance
7 at a conference or can you remember?

8 A. I don't remember.

9 109 Q. Okay. What was your understanding of what that 11:01
10 conference was going to be about, superintendent?

11 A. My understanding, it was going to be in relation to a
12 discussion on the actual statement of complaint on the
13 day that had been made by Marisa Simms and what
14 proposed actions were required in relation to it.

15 110 Q. Okay. And why did you think you were being invited to 11:02
16 that conference?

17 A. Well, I suppose I certainly was being invited to the
18 conference because of the fact on the day that
19 certainly I would have been acutely aware that some of
20 the alleged incidents definitely occurred within my 11:02
21 policing district and for that particular reason I
22 would have had a responsibility in relation to a review
23 or management of them particular situations.

24 111 Q. Okay. And who else did you understand was going to be
25 at that conference? 11:02

26 A. I don't think I understood who was or wasn't going to
27 be at it, I just arrived at the conference and I noted
28 the people on the day that were present at the
29 particular conference.

1 112 Q. Okay. And I think that note appears at page 2461 of
2 the materials. You have noted that Chief
3 Superintendent McGinn, Superintendent Finan, Inspector
4 Sheridan, Detective Inspector O'Donnell and Garda
5 Campbell were at that conference.

11:03

6 A. That's correct.

7 113 Q. Okay. Could you tell us what do you remember being
8 discussed at that conference?

9 A. I suppose, everybody that was there had -- was there
10 for -- they were there for a particular -- for a
11 particular reason. I suppose Superintendent Finan was
12 there because Garda Harrison at that particular time
13 was stationed within his Garda district. Inspector
14 Sheridan was there because she was the one, she took
15 the actual statement of complaint from Marisa Simms.
16 Detective Inspector O'Donnell would have been there in
17 his role on the day in relation to the threats and the
18 investigations they were at. And Garda Campbell was
19 present in relation to the fact that he managed the
20 portfolio in the chief's office in relation to
21 complaints, internal affairs, that particular
22 situation.

11:03

11:03

11:03

23 114 Q. I just want to be clear about Detective Inspector
24 O'Donnell, you said he was managing the threats, they
25 were the threats made to Garda Harrison on 4th and 5th
26 October, am I correct in saying that?

11:04

27 A. Well, he was there on the day for the purposes of the
28 actual management of the security threats.

29 115 Q. Yes.

1 A. Yes.

2 116 Q. To Garda Harrison?

3 A. To Garda Harrison.

4 117 Q. It had nothing to do with burning and bury threats?

5 A. No, not -- 11:04

6 118 Q. I just want to be --

7 A. No, not -- it wasn't --

8 119 Q. That was his purpose?

9 A. Yeah, it would have been his purpose. But in relation
10 to serious criminal investigations or any investigation 11:04
11 that required a serious criminal investigation focus,
12 Detective Inspector O'Donnell, detective inspector of
13 the division would always attend at those particular
14 conferences.

15 120 Q. Okay. And what do you remember being discussed at that 11:04
16 conference?

17 A. The statement that was made by Marisa Simms on the 6th
18 was the main subject of the actual discussion.

19 121 Q. Okay. Did you make any notes other than the notes that
20 we are looking at now, in relation to that conference? 11:04

21 A. No. The only note that I made are the notes that I
22 presented to the Tribunal.

23 122 Q. Okay. We know Inspector Sheridan made some notes and
24 they appear at page, from 2426 of the materials
25 onwards. And she notes, it's at 10:00am on 8/10/2013, 11:05
26 and then the first thing she has noted is "activity
27 reports and Pulse" and then three people's names. I
28 think it's Marisa, Paula and Rita. Am I correct in
29 saying that?

1 A. It looks like Andrew, maybe.

2 123 Q. Andrew?

3 A. Yeah.

4 124 Q. And then "COR one" and "interview", people to be
5 interviewed. "Phone to be dumped. GSOC." And I will 11:06
6 come back to that with you in a minute. "HSE
7 referral." And then: "Phone in relation to Martin
8 McDermott." That was in relation to the threats
9 received by Garda Harrison, is that correct?

10 A. Yes. 11:06

11 125 Q. The investigation --

12 A. That would have been relevant to that aspect of it,
13 yes, yes.

14 126 Q. Okay. And then the GSOC matter, which I will return to
15 again in more detail, is noted by her. And statements. 11:06
16 So that would appear to be, a plan was being laid out
17 as to how matters were to be advanced, is that correct,
18 in relation to Garda Harrison and the statement made by
19 Ms. Simms?

20 A. Yeah, that -- 11:06

21 127 Q. Is that your memory of the conference?

22 A. That would be correct. So, people that were present on
23 the day, everybody was there for -- had a particular
24 reason for being there, and I don't have significant
25 amount of notes in relation to it, but I have a note in 11:07
26 relation to what my responsibilities were and I suppose
27 that's the purpose and function of my journal, to note
28 what my instructions were.

29 128 Q. Okay.

1 A. Yes.

2 129 Q. So it would appear from that note that Inspector
3 Sheridan was to investigate the statement itself and
4 anything that arose out of that statement, any
5 follow-up investigation, the GSOC matter, which I will 11:07
6 return to, was your area of responsibility; then we had
7 the HSE matters and the threats to Garda Harrison, was
8 that going to be Inspector O'Donnell's responsibility?

9 A. Yeah. Well, in relation to Inspector O'Donnell, yes,
10 he would have fulfilled a responsibility in relation to 11:07
11 that aspect of it and possibly in relation to assisting
12 with the actual criminal investigation as well, of
13 course.

14 130 Q. And Chief Superintendent McGinn, was she directing what
15 was to be done or was it a joint decision or can you 11:08
16 remember that, superintendent?

17 A. It was an open discussion, everybody that was present
18 was there for a particular reason, and they were --
19 everybody was there would have been given an
20 opportunity and invited for an opportunity on the day 11:08
21 to provide their input in relation to how the
22 investigation should proceed. But ultimately, I
23 suppose, decisions were made and people were assigned
24 jobs and responsibilities from the particular
25 conference. 11:08

26 131 Q. Now, I suppose on one view of matters, Superintendent,
27 this was a very high level conference to take place in
28 respect of what, at the end of the day, was an
29 allegation of domestic violence/domestic abuse?

1 A. I think, Chairman, it was simply more than just
2 allegations of domestic violence and abuse. There were
3 serious -- there were threats to kill, allegations of
4 harassment, allegation of criminal damage, threats to
5 burn, they were significantly more than just simple 11:09
6 domestic related incidents. There was serious criminal
7 allegations contained in that particular statement.

8 132 Q. I suppose if I can put it this way, superintendent:
9 One would expect a conference like that to take place
10 if there had been a murder in the district or a crime 11:09
11 of that, and I don't mean to denigrate domestic
12 violence matters in any way but a crime of that nature,
13 so have you, in your experience, participated in such a
14 conference in relation to a domestic violence matter?

15 A. I have participated in investigations, previous 11:09
16 investigations of a serious nature where a conference
17 was held in relation to them. I think we need to
18 clarify the difference between a conference that is
19 held in relation to a particular investigation and the
20 setting up of an incident room to investigate a murder, 11:09
21 as has been represented. This was not a murder
22 investigation, this was not a matter on the day that
23 Chief Superintendent McGinn had directed on the day
24 that an incident room be set up in relation to and a
25 jobs book open, this was a conference on the day to 11:10
26 discuss a statement that was made in relation to
27 serious criminal investigations and what path of
28 investigations may well be appropriate into the future
29 in relation to it.

1 133 Q. Yes. That would be of assistance to the Tribunal, if
2 you would explain that. Were such conferences
3 regularly held in relation to allegations of criminal
4 misconduct by any other people?

5 A. They have been held in the past, but I suppose we have 11:10
6 to take this particular situation into focus. These
7 were serious criminal allegations against a serving
8 member of the force. There was a greater
9 responsibility on us, in that this was a serving member
10 of An Garda Síochána and if these allegations were true 11:10
11 then they required an immediate focus and immediate
12 attention.

13 134 Q. If it is the case that a factor in the holding of this
14 conference was because a serving member of the force
15 was implicated in domestic violence, I would like you 11:11
16 to explain that or expand on it, because it may be that
17 it's not unreasonable on a management level to deal
18 with serious allegations made against a member of An
19 Garda Síochána.

20 A. But if I can repeat myself: These were not just simply 11:11
21 domestic related incidents. These were incidents that
22 are alleged to be serious criminal matters. They were
23 allegations of assault, there was allegations of
24 criminal damage, threats to burn, there was allegations
25 of harassment. Like, they were -- and threats to kill. 11:11
26 They were serious criminal matters.

27 135 Q. Okay. I suppose the point could be made if the matter
28 hadn't been taken seriously by Garda management, the
29 guards would be criticised into the future in relation

1 to the matter.

2 A. Certainly if some form of immediate action wasn't taken
3 to investigate this matter and a more serious incidents
4 were to occur in the future, of course we would be
5 criticised in relation to how we dealt with the matter. 11:12

6 136 Q. And do you think as a superintendent with very many
7 years experience it was appropriate to convene a
8 meeting to discuss matters, as you did on that day?

9 A. Yes, I do.

10 137 Q. And is that for all the reasons you have explained to 11:12
11 me in the preceding five minutes, maybe,
12 superintendent?

13 A. Yes.

14 138 Q. Yes. Now, I think you were tasked with one particular
15 job coming out of that conference, is that correct? 11:12

16 A. Well, I suppose would have been tasked with two, but
17 one of them was a mandatory requirement so I didn't
18 write it down. There was a mandatory requirement on me
19 as the district officer in the area where the actual
20 incident occurred, and that was the referrals to Tusla. 11:12
21 The other part of my tasking was having discussed the
22 matter at length with Chief Superintendent McGinn, then
23 a decision was made that the matter required referral
24 on the day to the Garda Síochána Ombudsman Commission
25 in accordance with section 102. 11:13

26 139 Q. Now, I think you have been here for the last few weeks,
27 superintendent, and you have heard what is said about
28 the section 102 referral, and in relation to the
29 definition of serious harm and harm. You had already

1 been involved, we know from the papers, in a referral
2 in relation to Garda Harrison, a section 102 referral,
3 in April of the previous year, isn't that correct?

4 A. Just to clarify, I wasn't actually here present for the
5 actual discussions in relation to section 102 when the 11:13
6 evidence was given. I have had a look at the
7 transcripts but I wasn't actually present for the
8 actual evidence in relation to it. And yes, I made a
9 previous section 102 referral earlier on in this
10 particular year. But section 102 referrals would not 11:13
11 be unusual, I have made quite a considerable amount of
12 section 102 referrals since my appointment as a
13 superintendent in 2005.

14 140 Q. Okay. Did you think it was appropriate to make such a
15 referral in relation to what had been alleged against 11:14
16 Garda Harrison?

17 A. I did, or I wouldn't have made it.

18 141 Q. And if you could explain why you thought it was
19 appropriate to make such of a referral.

20 A. The statement as presented by Marisa Simms highlighted 11:14
21 serious threats, a serious level of harassment on the
22 day, threats to burn, threats to kill, I was of the
23 view on the day that what was contained in that
24 particular statement on the day represented a serious
25 risk of harm or possibly on the day into the future, a 11:14
26 future situation. I appreciate that the section 102
27 refers to a past situation but there was potential on
28 the day for more, a more serious potential situation
29 into the future. I also took into consideration, and I

1 have significant experience on the day having worked on
2 the Donegal Women's Domestic Violence Services
3 Management Board and in relation to the whole issue or
4 area of management of domestic violence related
5 situations, as far as I was concerned serious harm had 11:15
6 been presented here in relation to Marisa Simms, both
7 from an emotional and psychological point of view, and
8 that there may well have been harm of the mind caused
9 to Marisa Simms and I was of the view that this
10 situation needed to be investigated by an independent 11:15
11 authority on the day and GSOC are the people who are
12 mandated with investigating Garda members and it was an
13 independent -- it required an independent profile, it
14 wasn't something that should have been investigated at
15 a local level. 11:15

16 142 Q. And the matter of an independent investigation and
17 taking it out of the locality, was that something which
18 factored into your decision to make the section 102
19 referral in a significant way or was it a less
20 significant element? 11:15

21 A. It certainly would have been a factor. Nevertheless,
22 like, there was a responsibility on An Garda Síochána,
23 irrespective of whether we made that referral under
24 section 102 or the referral would subsequently be made
25 under section 85, we had no choice in the matter. It's 11:16
26 a mandatory requirement on us to refer matters on the
27 day where a member of the Garda Síochána is involved in
28 criminal behaviour of this particular nature, there is
29 a mandatory responsibility on us to refer that matter

1 on the day to GSOC and it's a matter for GSOC on the
2 day to make decisions in relation to what level of
3 involvement or investigation they propose to take into
4 the future.

5 143 Q. Okay. And was the question of whether it should have 11:16
6 been referred to GSOC under section 85 discussed at the
7 conference or whether it should be a section 85
8 referral or a section 102 referral?

9 A. I believe it was. But because -- as I said earlier on,
10 because of the seriousness of the actual allegations 11:16
11 that were contained in the statement, the whole aspect
12 of the domestic violence, the psychological, emotional
13 trauma that was obviously on the day having been
14 perpetrated on Marisa Simms then a decision was made
15 that the most appropriate way to make this particular 11:17
16 referral was in accordance with section 102.

17 144 Q. And am I correct in taking it from your evidence,
18 superintendent, that the matter was going to be
19 referred to GSOC in any event, it was just a matter of
20 which particular mechanism was going to be followed by 11:17
21 An Garda Síochána in Donegal as to how it was to be
22 referred, am I incorrect in that?

23 A. No, you are not incorrect in that. The situation is
24 that irrespective of whether it was a section 102
25 referral or a section 85 referral there was a mandatory 11:17
26 requirement, we have a compulsory requirement -- like,
27 there are two HQ directives that dictate to us on the
28 day how it should be done. 102 is 10/10, 85 is 50/13.
29 It doesn't really matter. One way or the other this

1 matter on the day was going to become the subject of a
2 review or an evaluation by GSOC, irrespective of
3 whether it was done on this particular day or done at
4 some later date on the day when -- if it had been
5 referred in accordance with section 85. And I think -- 11:18
6 like, I only read the transcripts but I think, and
7 based on the actual documentation or the final
8 evaluation that was done by Mr. Wright and the evidence
9 that was given by Mr. O'Doherty, that is exactly on the
10 day what happened in this situation. There may well 11:18
11 have been an issue with Mr. Wright when I spoke to him
12 in relation to this particular matter and the referral
13 under section 102, nevertheless he took this matter on
14 board, certain inquiries and investigations were
15 carried out, he consulted with Ms. Simms in relation to 11:18
16 the matter and it was because of the attitude of
17 Ms. Simms in relation to the actual complaint that she
18 made to us that the GSOC made a final decision and
19 decided not on the day to take this matter forward in
20 relation to an investigation by their personnel. 11:18
21 145 Q. We will be hearing from Mr. Wright in respect of his
22 thinking in relation to the matter, but I think on
23 leaving the conference, you immediately took steps to
24 refer the matter to GSOC, is that correct? Your notes
25 would appear, it's page 2461 of the materials. 11:19
26 A. Yeah, I think -- the conference we had was at 10am, so
27 upon completion of the actual conference, I would have
28 returned to Milford Garda Station and in accordance
29 with our instructions I would have made contact with

1 Garda Command and Control System in Dublin in relation
2 to the matter and requested the GSOC on call, SIO, to
3 make contact with me in relation to a particular
4 matter.

5 146 Q. Okay. And I think that is the procedure that has to be 11:19
6 followed in relation to section 102 referrals to GSOC?

7 A. Yeah. That is the standing procedures for ourselves in
8 relation to making a section 102 referrals to GSOC.

9 147 Q. So once it had been decided to go down the section 102
10 route, it was a given that it would be done immediately 11:19
11 and you were to do it immediately, is that correct?

12 A. Well, that's the regulations in relation to section 102
13 referrals, so -- And I think Mr. Chairman, it's
14 important that it should be noted that when the matter
15 of a section 102 referral was discussed, in accordance 11:20
16 with our instructions also, if a decision was made not
17 to refer it then I also am required on the day to
18 provide a rationale for not doing it in the first
19 place. The form that we complete in relation to the
20 referrals is twofold: One, it sets out the criteria 11:20
21 and why you are making the 102 referral but you must
22 set out your rationale or criteria for not making the
23 refer if it has been the subject of some form of review
24 or discussion. So, one way or the other I was obliged
25 on the day to make, give a decision one way or the 11:20
26 other and record it in writing in relation to the
27 referral.

28 148 Q. Now, the actual referral is at page 335 of the
29 materials and I just want to take you through that,

1 superintendent. I think it's a standard form for all
2 section 102 referrals. A form has to be filled out
3 called an Annex 1?

4 A. That would be correct. If you don't mind, I am just
5 going to take the document out of my own documentation 11:21
6 because I can't actually see the one that is there.

7 149 Q. Yes. I think it might be in volume 1 of the materials
8 at page 335.

9 A. I will just look at my own.

10 150 Q. It's appendix 34 to your statement. 11:21

11 A. No, no, it's perfect. I have it here in front of me.
12 Yes.

13 151 Q. So we have the heading of the form:
14
15 "Decision made in consideration under provisions of 11:21
16 section 102(1) An Garda Síochána Act 2005.
17
18 Details of deceased or injured person."
19

20 So the injured person there, who are you referring to? 11:21

21 A. The injured person, as I have indicated in my direct
22 evidence, was Marisa Simms.

23 152 Q. Okay. So the serious harm is identified as:
24
25 "Threats to kill with risk of serious harm. 11:22
26 Name: Marisa Simms.
27 Address: Woodbury house."
28
29 And it continues on and her date of birth.

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"District officer notified of matter.
By whom notified: Eugene McGovern.
Date and time: 8th October 2013 at 12:42pm.

11:22

Action taken on notification: Statement of complaint made on 6th October 2013, viewed statement on 8th October 2013. Deemed allegation subject to section 102 Garda Síochána Act. Notified command and control. Spoke with Mr. Darren Wright, GSOC, and agreed to email copies of statement made by both Marisa Simms and Rita McDermott. To come back to me with a decision thereafter."

11:22

So that is Mr. Wright was to decide, is that correct?

11:22

A. That would be correct. I mean, they are just simply brief details in relation to the matter. When I spoke on the phone to Mr. Wright I would have given him brief details in relation to what was contained in the statements, he would have requested the actual copies of the statements that we were relying on, Marisa Simms' statement and Rita McDermott's statement, and I also on the day, when I would have sent him the documentation, I also made him aware and provided a telephone contact for Inspector Goretta Sheridan who was the liaison inspector in relation to these particular investigations.

11:23

11:23

153 Q. When we come down to "Details of Incident" the day/date, it begins on April 2011 to present date. Can

1 you explain what you were thinking of there in relation
2 to the date on the matter?

3 A. I just covered the timeframes from the start of the
4 actual statement or the start of the allegations, right
5 through to the actual present date. It was just a 11:23
6 simple timeframe to put on it. But I suppose it was
7 taking into consideration the extent of the actual
8 domestic violence-related aspects and the involvement
9 of Marisa Simms in the overall situation.

10 154 Q. Okay. You have set out the locations -- location and 11:24
11 then in "Circumstances" you say:

12
13 "Ms. Simms left her husband and became involved in a
14 relationship with Keith Harrison. During the course of
15 this relationship he made threats to kill and burn her 11:24
16 out. He harassed her via her phone and in person to a
17 point that she is at serious risk of harm and possibly
18 death."

19
20 Was that your opinion at the time, superintendent? 11:24

21 A. That was my view in relation to it.

22 155 Q. And then you have:

23
24 "The details of member of the Garda Síochána whose
25 conduct may have resulted in the death or serious harm 11:24
26 to the person."

27
28 That is Garda Harrison's details. And the "Decision of
29 District Officer" is dated 8th October 2013 "To whom

1 referred: Mr. Darren Wright". And the reason for the
2 referral:

3
4 "Due to the serious nature of the allegation and the
5 threat of further serious harm and possibly death, 11:25
6 deemed incident appropriate for referral and decision."
7

8 And you have signed that on 8th October.

9 A. That's correct, Chairman.

10 156 Q. Now, there is also a handwritten version of that form 11:25
11 with the appendices to your statement. Did that form,
12 was that form sent to GSOC or that was retained for
13 your own records?

14 A. No, that form would have been -- it was, following
15 preparation it was faxed to GSOC, to Mr. Wright, at 11:25
16 1:08pm on the 8th.

17 157 Q. Okay. And also in relation to that, was the statement
18 of Ms. Simms and Rita McDermott sent to Mr. Wright?

19 A. They were, Chairman.

20 158 Q. And was that on the same day or was it the day after? 11:25

21 A. No, it was done on the same day.

22 159 Q. Okay. And just, it would appear that it was on the 9th
23 that that happened, from page 333 of the materials,,
24 that the statements were sent to Mr. Wright, but I
25 think that's a small matter. The transmission report 11:26
26 would appear on the 9th. But you spoke to Mr. Wright
27 about it, sent the referral and either on 8th or 9th
28 sent the statements to Mr. Wright in relation to the
29 matter.

1 A. Yeah, that would be correct.

2 160 Q. Yes.

3 A. That would be correct, yes.

4 CHAIRMAN: Ms. Leader, maybe you would help me; who is
5 Mr. Wright? 11:26

6 MS. LEADER: Mr. Wright is a GSOC employee.

7 A. Yes, Mr. Darren Wright, he was the actual SIO on behalf
8 of GSOC who actually contacted me in relation to the
9 referral.

10 CHAIRMAN: But he's not somebody in your division who 11:26
11 deals with GSOC matters and somehow processes them? He
12 is not up in Donegal?

13 A. No, Mr. Chairman. The way it works is: Once you
14 contact Command and Control, whatever SIO is actually
15 on call for GSOC at that given time, they are the 11:27
16 actual person on the day who rings you back. On this
17 occasion it would have been Mr. Darren Wright and I
18 would have actually known Mr. Wright from previous
19 occasions.

20 CHAIRMAN: I understand. 11:27

21 161 Q. MS. LEADER: And when you say senior investigating
22 officer, he is a senior investigating officer attached
23 to GSOC, is that correct?

24 A. He was at that particular time. He may hold a
25 different position now but he certainly was, yeah. And 11:27
26 it's always a senior investigating officer that takes
27 the 102 referrals.

28 162 Q. Okay. They are not an employee of An Garda Síochána,
29 they are a GSOC employee?

1 A. No, they are employed on behalf of the Garda Síochána
2 Ombudsman Commission.

3 163 Q. And part of his job as senior investigating officer is
4 to investigate matters that are referred to him by An
5 Garda Síochána and this was a section 102 referral, so 11:27
6 it was an urgent matter to be investigated?

7 A. Yeah, it's a referral.

8 164 Q. Yes.

9 A. And I think that is very important, that we -- that is
10 what it is. It's a referral on behalf of An Garda 11:27
11 Síochána to the Garda Síochána Ombudsman Commission.
12 What happens after that particular referral, we don't
13 have any decision in.

14 165 Q. Okay.

15 A. They evaluate it, they make their decisions and they 11:28
16 come back to us with a decision in relation to it. And
17 following that particular decision then, a follow-up
18 decision needs to be made in relation to what follow-up
19 attention or otherwise is required, either through GSOC
20 investigations or at our own level, Mr. Chairman. 11:28

21 166 Q. Okay. And I think you also forwarded a copy of the
22 referral, the Annex 1 form, to the Assistant
23 Commissioner in Garda Headquarters?

24 A. That is the policy that is in place. A copy would be
25 forwarded to chief superintendent Letterkenny with a 11:28
26 copy of the relevant documentation, but also a copy is
27 forwarded on the day to our internal affairs section in
28 relation to all referrals on the day, all matters that
29 are referred to the Garda Síochána Ombudsman Commission

1 irrespective of whether they are 102 referrals or
 2 section 85 referrals.

3 167 Q. And the letter sending that matter to the Assistant
 4 Commissioner HRM Garda Headquarters appears at page 370
 5 of the materials. Appendix 35 to your statement, 11:29
 6 superintendent. And it would appear that the Annex 1
 7 form was forwarded to the assistant commissioner on the
 8 9th by way of fax and you informed them, the assistant
 9 commissioner:
 10

11 "The Garda Síochána Ombudsman Commission has not yet
 12 decided how this investigation should proceed."
 13 A. That would be correct. I would have found often in the
 14 past when we would have made a referral of this
 15 particular nature generally they would give you a very 11:29
 16 early decision in relation to whether they were
 17 accepting it as a 102 referral and what course of
 18 investigation they proposed to take. On this
 19 particular occasion we didn't get an early decision
 20 from the Garda Síochána Ombudsman Commission in 11:30
 21 relation to it.

22 168 Q. For completeness, at page 382, you forwarded a copy of
 23 all documentation forwarded to GSOC, to the chief
 24 superintendent, also on 9th of October, and that
 25 appears at appendix 36 of your materials at page 382. 11:30
 26 A. That would be correct, Mr. Chairman.

27 169 Q. So, you referred to GSOC, forwarded a copy of the
 28 referral to Garda Headquarters and to the chief
 29 superintendent in Letterkenny and spoke to Mr. Wright

1 about the matter of GSOC, is that correct?

2 A. That would be correct. Mr. Wright, he did indicate to
3 me that he would be inquiring into the matter via --
4 with chief superintendent Letterkenny -- yeah, with
5 Chief Superintendent McGinn in relation to the matter 11:30
6 and that as a matter of courtesy he with would come
7 back to me at some stage into the future with a
8 decision as to how he proposed to deal with the actual
9 referral.

10 170 Q. Okay. Now, I wonder if you could explain to the 11:31
11 Tribunal, superintendent, has it ever been the case in
12 relation to a referral, leaving aside this referral,
13 that GSOC have declined deal with it, it having been
14 referred to them as a section 102 referral? In your
15 experience, have they in the past declined to deal with 11:31
16 matters of section 102 referrals?

17 A. Maybe you could clarify what you mean by declined to
18 deal with a -- they must deal with all section 102
19 referrals.

20 171 Q. Sorry, accept it as a section 102 referral. 11:31
21 A. Again I would say they must accept it.

22 172 Q. Okay.
23 A. They must accept it. They must accept it as a section
24 102 referral. I suppose it's, what decision they make
25 in relation to it after the referral, I suppose every 11:31
26 case stands on its own merits, but the situation is
27 they must accept it and make a decision in relation to
28 it.

29 173 Q. Okay. Have they, in your experience, made decisions

1 not to proceed with an investigation?

2 A. Yes.

3 174 Q. And that's other than this particular matter?

4 A. Yes. On a number of occasions they would have carried
5 out a review in relation to the actual available 11:32
6 evidence, they would have spoken to the nominated
7 inspector that was assigned to the actual referral, and
8 they would have made a decision at that particular
9 point in the day that they wouldn't continue any
10 investigations in relation to it. I suppose in this 11:32
11 particular incident I did find it a wee bit strange
12 that the referral was queried in such a manner.

13 175 Q. Okay. why do you say that, superintendent?

14 A. Because at that particular point I would have been
15 aware that Mr. Wright proposed on the day to query the 11:32
16 actual rationale for making it, but that was the first
17 time I ever had received an inquiry of that particular
18 nature from the Garda Ombudsman Commission.

19 176 Q. Okay. And if you could explain to the Tribunal your
20 conversations or tell the Tribunal of your 11:33
21 conversations with Mr. Wright about querying the
22 rationale?

23 A. At the earliest point of contact with Mr. Wright, he
24 did indicate that he had a concern that the actual, the
25 referral didn't fall within the remit of section 102 11:33
26 and that it may well have been more appropriate to
27 refer it under section 85, and that was the only
28 conversation that we had in relation to it. He said he
29 would be -- he would be reviewing the matter and he

1 sought the statements to make a decision in relation to
2 it.

3 CHAIRMAN: Well, when did he ring him? Did he ring
4 immediately or the 8th or the 9th or whatever?

5 A. On the 8th, when I spoke to him on the 8th when I would 11:33
6 have generated the original section 102 referral.

7 CHAIRMAN: So, he hadn't got it yet?

8 A. No, well, he -- No, hadn't actually got the statements,
9 but he had -- he had -- I had a conversation with him
10 and explained the circumstances. 11:34

11 CHAIRMAN: I am sorry for not understanding,
12 Ms. Leader.

13 A. Generally what we would do, you would make the phone
14 call, they ring you back and you explain the
15 circumstances of the actual incident or the -- 11:34

16 CHAIRMAN: He is not actually reading the forms?

17 A. No. At that particular stage he is not seeing the
18 form, he is not seeing any statements and the standard
19 procedure with ourselves and GSOC, we would
20 automatically complete the actual referral forms that 11:34
21 are mandatory for us under the regulations and we
22 supply them with the available evidence that is in our
23 possession at that time. Sometimes it's a report.

24 CHAIRMAN: Okay. I am sorry, I was just confused and
25 particularly vis-à-vis the dates as to when it was 11:34
26 sent, the 8th or 9th. So, you did have a chat with him
27 on the phone about the referral and that is normal
28 practice?

29 A. Yes, indeed.

1 177 Q. MS. LEADER: Now, I think you also were forwarded
2 emails from Chief Superintendent McGinn about queries
3 she had dealt with, with Mr. Wright in respect of the
4 referral, is that correct?

5 A. Yeah. Mr. Wright did, as he had indicated to me, he 11:35
6 did query the matter, I understand internal affairs and
7 Chief Superintendent McGinn would have been asked on
8 the day to provide an explanation for the rationale for
9 the section 102 referral.

10 178 Q. Okay. And those emails appear at page 396 of the 11:35
11 materials, where Mr. Wright, on 8th October 2013, at
12 quarter to three in the afternoon, emails Chief
13 Superintendent McGinn, it's halfway down the page, and
14 he says:

15 11:35
16 "I refer to the above and to two statements forwarded
17 to me by way of email earlier today."
18

19 They were the statements you had forwarded, the
20 statements of Marisa Simms and Rita McDermott, is that 11:35
21 correct

22 A. Yeah, that would be correct. Now it's extremely --
23 it's basically impossible to read there now.

24 179 Q. Okay. It's appendix 38 of your documentation.

25 A. Yeah, that's the copy of the email that had been 11:36
26 received by Chief Superintendent McGinn. She would
27 have provided me with a copy of it.

28 180 Q. And what Mr. Wright said is:
29

1 "I refer to the above and two statements forwarded to
2 me by way of email earlier today. Having read the
3 statement of the above-named --"
4

5 That is Ms. Simms. 11:36

6
7 "-- I would be grateful for clarification as to why
8 this matter was not notified to this office in
9 accordance with section 85 of the Act. In addition,
10 and so that records may be updated at our office, I 11:36
11 also require confirmation of the rationale for the
12 referral pursuant to section 102 of the Act as this is
13 not immediately clear from the statement of Marisa
14 Simms.

15 11:37
16 I look forward to receiving this information by return
17 so that GSOC may consider the most appropriate way in
18 which to respond.

19
20 Yours sincerely 11:37

21 Darren Wright

22 Senior Investigating Officer

23 Garda Ombudsman Commission."
24

25 And then it's Chief Superintendent McGinn who replies 11:37
26 to that email, she copies it to you and also to Garda
27 Campbell, who I understand is in her divisional office,
28 and she says:
29

1 "Dear Mr. Wright
2 I refer to yours of even date. The statement of
3 Ms. Simms was completed at 11:30pm on Sunday, 6th
4 October 2013 by Inspector Sheridan. At that time
5 Gardaí were dealing with two 999 calls relative to the 11:37
6 alleged threats on Garda Harrison's life. On Monday
7 7/10/2013 Gardaí were continuing to liaise with
8 Ms. Simms to ascertain the full extent of the
9 allegations and supporting evidence. I directed a case
10 conference to be held on this date to assess and 11:38
11 analyse all of the available information, including
12 ECAS."

13

14 I don't know if you could assist me?

15 A. ECAS, it's actually a download of data from phone -- 11:38
16 phone data.

17 181 Q. Phone data?

18 A. Yes, 999 phone data.

19 182 Q. "-- including ECAS records and downloads. After
20 analysis and consideration of the seriousness of the 11:38
21 incidents, including the threat to Ms. Simms and her
22 children and the threats against Garda Harrison, it was
23 determined the behaviour of Garda Harrison created a
24 substantial risk of death or serious harm to Ms. Simms
25 and her children. Consequently, it fell within the 11:38
26 remit of section 102 of the Act and therefore the
27 referral was made by the district officer in Milford,
28 the area where the most serious alleged offences took
29 place."

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And Chief Superintendent McGinn signs off on that email. Does that reflect your understanding of why you made the referral, superintendent?

A. It does, but it probably doesn't reflect on what I have represented in relation to the actual domestic violence-related aspect of it, and the actual emotional and psychological trauma that had been represented in relation to Ms. Simms from the catalogue of events that would have occurred and the harm that may well be affecting her, not from a physical point of view but from a mental point of view. But other than that there yes, it represents the rationale that was used for making a 102 referral.

183 Q. Okay. Well, I suppose, superintendent, the threats to Garda Harrison don't seem to have been referred to in the actual referral itself.

A. Well, I didn't -- I didn't take into consideration the threats to Garda Harrison.

184 Q. Okay.

A. This, the 102 referral was in relation to the actions of Garda Harrison, not in relation to what occurred to Garda Harrison himself.

185 Q. Okay. And did you have any further dealings with GSOC in relation to the section 102 referral?

A. Other than to make an inquiry of Mr. Wright in relation to what -- on 6th of November I would have spoken to Mr. Wright in relation to the matter. Because I suppose, we were concerned that we hadn't got a reply

1 from the Garda Ombudsman Commission in relation to the
2 matter at that particular stage, because they required
3 to have advanced the investigation, whether they were
4 going to advance the investigation or whether it was a
5 matter on the day that the investigation was going to 11:40
6 have to be advanced from a Garda perspective or local
7 management perspective, and I spoke to Mr. Wright on
8 6th November. And on that occasion he indicated to me
9 that he had been in contact with Mr. Simms [sic] in
10 relation to the referral and that she had indicated to 11:41
11 them in writing that she was no longer willing to
12 cooperate with their inquiries.

13 186 Q. Okay.

14 A. So as a result, he indicated that the section 102
15 referral as presented by me to their office, that at 11:41
16 that stage they would be closing their file in relation
17 to the matter.

18 187 Q. Okay. And in relation to your own Garda authorities,
19 did you have any further communication with your Garda
20 authorities in relation to the referral to GSOC? 11:41

21 A. I would have been aware that Mr. Wright provided that
22 decision in writing on the day to chief superintendent
23 in Internal Affairs and to chief superintendent
24 Letterkenny, I would have been aware that they had made
25 their decision to terminate their involvement in the 11:41
26 matter. As a result, an appointment was sought in
27 relation to the investigation of the matter, a further
28 investigation of the matter at local level. A decision
29 was subsequently made that I should be the one who

1 would be appointed to carry out any disciplinary or
2 criminal implications that may well have arisen for
3 Garda Harrison in relation to the matter, but the
4 matter was subsequently on the day reviewed by chief
5 superintendent Internal Affairs who decided that it 11:42
6 wasn't appropriate that I should investigate the
7 matter. And as a result I had no further involvement
8 or dealings in relation to it.

9 188 Q. Okay.

10 A. And that took us into January of 2014, and at that 11:42
11 particular point I was no longer the district officer
12 attached to the Milford Garda district, so in relation
13 to the criminal investigations I no longer held the
14 responsibility in relation to any criminal-related
15 matters associated with the allegations that were made 11:42
16 on 6th October by Marisa Simms, or any follow-up that
17 was required in relation to it, Chairman.

18 189 Q. So I think your appointment took place on 7th January
19 2014?

20 A. That would be correct. 11:42

21 190 Q. And that appears at appendix 48 of the documentation.

22 A. Yes, appendix 48, yes.

23 191 Q. Page 452 of the materials.

24 A. Yes.

25 192 Q. Chief Superintendent McGinn appointed you as 11:43
26 investigating officer to investigate the alleged
27 breaches of discipline as set out in attached form
28 IA31.

29 A. Yes, I think as far as I recall that was on the

1 instructions of the regional commissioner, that I would
2 be the one that should be appointed on the day to
3 investigate it. Chief Superintendent McGinn had sought
4 an independent investigator from outside the Donegal
5 Garda division at that particular point. She felt it 11:43
6 was prudent that somebody with no direct involvement in
7 any way in relation to the matter, and bearing in mind
8 that Garda Harrison was a serving Garda member in the
9 Donegal division, that an independent investigator from
10 outside the division would be the person best -- 11:43

11 193 Q. Best placed?

12 A. -- placed to actually carry out an independent
13 investigation in relation to the matter.

14 194 Q. So that investigation, the appointment, the actual
15 document appointing you appears at page 453 of the 11:44
16 materials, where you are to investigate Garda Keith
17 Harrison as he may have been in breach of discipline as
18 set out, that he allegedly verbally and physically
19 assaulted, harassed and threatened to kill, harm Marisa
20 Simms on various dates throughout their relationship. 11:44
21 And then there is the matter of accessing details on
22 Ms. Simms' motor vehicle on different occasions between
23 August 2009 and April 2013.

24 A. That would be correct, that was the -- that was the
25 documentation or the documentation of appointment. 11:44

26 195 Q. Okay. And it was the assistant commissioner of the
27 northern region, Assistant Commissioner Kenny, who had
28 directed Chief Superintendent McGinn to appoint you to
29 investigate the matter, and it would appear he did that

1 on 28th November 2013, and that correspondence appears
2 at page 454 of the materials?

3 A. That is my understanding. And Chief Superintendent
4 McGinn will be able to explain it more fully, but my
5 understanding is, she requested an independent 11:45
6 investigator from outside the division to carry out
7 this particular investigation and the regional
8 commissioner, retired Commissioner Kenny, decided that
9 the matter on the day should remain within the Donegal
10 division and I should be appointed to carry out the 11:45
11 investigation. And chief superintendent Internal
12 Affairs subsequently made a decision that it wasn't
13 appropriate because of the fact that I had been
14 previously involved and made the section 102 referral,
15 that it would not be appropriate that I should carry 11:45
16 out this particular investigation or inquiry any
17 further and my appointment on the day was subsequently
18 terminated.

19 196 Q. Okay. Now, in relation to the 102 referral, in
20 relation to the matter, you had written to the chief 11:46
21 superintendent in Letterkenny on 12th of November,
22 justifying why the referral was made and that appears
23 at page 441 of the materials. It was based on "the
24 content of the statement of complaint made by Marisa
25 Simms and by way of follow-up briefing as provided by 11:46
26 Inspector Goretta Sheridan, who had met with and
27 recorded the criminal complaint."

28 CHAIRMAN: Ms. Leader, I need to make a phone call, if
29 you don't mind.

1 THE HEARING ADJOURNED BRIEFLY AND THEN RESUMED

2 AS FOLLOWS:

3 197 Q. MS. LEADER: Now, if I could just finish off the GSOC
4 referral. I think Mr. Wright, on 10th December 2013,
5 wrote to the chief superintendent in Internal Affairs, 11:53
6 who is Chief Superintendent McLoughlin, that letter
7 appears at page 447 of the materials. And he says:

8
9 "I wish to advise that the examination of this matter
10 pursuant to section 91 of the Act has revealed that 11:53
11 there was no death or serious harm at the time of the
12 referral and that the matter was improperly referred in
13 the view of the Commission.

14
15 The Garda Ombudsman Commission accepts, however, that 11:53
16 the decision to refer a matter to GSOC is entirely one
17 for An Garda Síochána.

18
19 The complaint from Marisa Simms was processed in the
20 usual way by GSOC and she has since confirmed in 11:54
21 writing that she no longer wishes to proceed with her
22 complaint and does not wish the Garda Ombudsman to take
23 any further action in respect of the matter.

24
25 The Minister has been written to and advised 11:54
26 accordingly. A copy is attached for your information."

27
28 That letter was sent to the chief superintendent in
29 Donegal, Chief Superintendent McGinn, by Superintendent

1 McLoughlin on 19th December 2013, and during the course
2 of that letter, which appears at page 445 of the
3 materials, he asked -- he noted the rationale for
4 referring the matter to the Ombudsman Commission, and
5 he has outlined in a report dated 1th November 2013:

11:54

6
7 "You will also note that in his aforementioned
8 correspondence the Ombudsman Commission is of the
9 opinion that the referral was made in error and that
10 the matter should have been notified to them in
11 accordance with the provisions of section 45 of the
12 Act."

11:55

13
14 And Chief McLoughlin inquires:

15
16 "If the suggestion as outlined in your correspondence
17 to the assistant commissioner northern region, dated
18 12th of November 2013, was pursued and if an officer
19 from outside the Donegal division was appointed to
20 address the matter."

11:55

21
22 And that is where matters came in about appointing you
23 to investigate the matter, is that correct?

24 A. That would be correct, Chairman.

25 198 Q. And that correspondence was forwarded to you on 7th
26 January 2014 by Chief Superintendent McGinn and that
27 appears at page 444 of the materials, is that correct?

11:55

28 A. That would be correct.

29 199 Q. It's: "Please find attached copy of correspondence for

1 chief internal affairs regarding their decision to
2 discontinue the matter in accordance with Section
3 93(1)(c) of the Garda Síochána 2005."

4 A. That would be correct. I suppose, Chairman, it's
5 important to note from the correspondence that 11:56
6 Mr. Wright sent, he did point out in that particular
7 correspondence that "the Garda Ombudsman accepts
8 however that the decision to refer a matter to GSOC is
9 entirely one for An Garda Síochána", so I mean the
10 decision -- the decision certainly was ours to make in 11:56
11 relation to whether the referral should or shouldn't be
12 made in accordance with section 102. And he did
13 further validate it in his report of the 10th December
14 2013, and he had indicated in relation to referral, he
15 said: "with this in mind, the statement of complaint 11:56
16 of Marisa Simms given to the Gardaí and forwarded to
17 GSOC was considered as a complaint matter in its own
18 right by GSOC and an admissibility decision was taken
19 on it in the usual way."

20
21 So the matter, though it was referred under 102 it was
22 dealt with basically in the same way, even if had been
23 referred under section 85, so there was no abuse of
24 process, the system on the day and the outcome or the
25 conclusion on the day was no different than if it had 11:57
26 been a referral under section 85.

27 200 Q. And that letter of the 10th December 2013 was a letter
28 from Mr. Wright to the Department of Justice and
29 Equality, and that is in relation to the section 102

1 referral. It appears in its entirety at page 449 of
2 the materials. It outlines the incident, and in the
3 very start of the letter, it should be there, what it
4 says is:

5
6 "I refer to the above incident referred to An Garda
7 Síochána Ombudsman Commission by Superintendent Eugene
8 McGovern, an examination under section 91 of Garda
9 Síochána Act 2005 has been conducted in relation to the
10 above incident and following examination the matter has
11 been discontinued. The examination of the 11:57
12 circumstances clearly shows that at the time of the
13 referral being made there was no death or serious harm
14 and the matter should have instead been notified to the
15 Garda Ombudsman pursuant to section 85 of the Act in 11:58
16 the normal way. GSOC accepts, however, that the
17 decision to make such a referral is a matter entirely
18 for the Garda Síochána as per current protocol
19 agreement."

20
21 And then it outlines the incident which was referred,
22 and at the very conclusion, it says:

23
24 "The examination --"

25
26 Again repeats.

27
28 "-- of the circumstances and evidence gathered to
29 date --"

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The conclusion is page 450 of the materials.

-- clearly showed no evidence of death or serious harm at the time of the section 102 referral and the matter was instead dealt with by GSOC as a complaint and processed in the usual way." 11:58

Then it refers to written confirmation from Marisa Simms that: 11:59

-- she did not wish to pursue the matter any further and did not want GSOC to take any action in respect of her complaint. No further action was taken by GSOC and the matter was discontinued pursuant to Section 93(1)(c) of Garda Síochána Act. The Garda Síochána Ombudsman Commission now considers the matter to be closed." 11:59

And that is where that -- 11:59

- A. I think, Mr. Chairman, what I take from the correspondence, like, I mean, Mr. Wright and his representation in relation to GSOC on the 102 referral that is accepted, but the discontinuation of the matter wasn't because it was referred under 102, the discontinuation of the matter was because of the lack of cooperation by Marisa Simms in relation to the matter. It was, the complaint was taken on board and Mr. O'Doherty in his evidence to the Tribunal, it was 11:59

1 taken on board and it was evaluated and followed
2 through in the same way as a section 85 referral was
3 made and a conclusion made based on the lack of
4 cooperation by Ms. Simms as opposed to the actual
5 referral under section 102. 12:00

6 201 Q. Okay. Now, if we could go back to October 2013 and the
7 HSE referrals, it's the final matter I intend to deal
8 with you, superintendent. The meeting on 8th of
9 October, the HSE referral matter, that was a duty you
10 had to complete arising out of the meeting and the 12:00
11 taking of the statement from Ms. Simms?

12 A. That would be correct, Mr. Chairman.

13 202 Q. And it was something that was so obviously had to be
14 done in your view, that you didn't even take a note of
15 it out of the meeting, is that correct? 12:00

16 A. That's correct, Mr. Chairman. It was a mandatory
17 requirement on me as the district officer in Milford
18 where any allegation was made and a child was present
19 during the course of that particular allegation, that
20 if there were child welfare or protection issues 12:01
21 identified there was a responsibility on me to refer
22 the matter on the day to the HSE or Tusla.

23 203 Q. So I think on the 9th October, you received under
24 confidential cover from Sergeant McGowan, HSE referrals
25 in respect of the two Simms children which she had 12:01
26 completed and you received them for your signature, is
27 that correct?

28 A. That's correct, Chairman.

29 204 Q. Now, those referrals appear at page 402 of the

1 materials, appendix 40 of your statement,
2 superintendent.

3 A. That's correct.

4 205 Q. And we have already -- they have already been opened to
5 the Tribunal and you see at the very -- halfway down 12:01
6 the page, you have signed those referrals, is that
7 correct?

8 A. That is correct.

9 206 Q. Now, in relation to the procedure that was followed, is
10 that a standard procedure; that the liaison officer 12:01
11 would prepare them and you'd sign them?

12 A. Yeah, the standard procedure would be that the actual
13 Garda member who is involved in the actual
14 investigation or making the referral would prepare the
15 documentation, the district officer would review the 12:02
16 actual documentation and sign off on the document as
17 the designated officer and refer the matter to the
18 principal social worker in the HSE.

19 207 Q. Now, just in relation to the additional information in
20 relation to the referral, which is set out there: 12:02
21
22 "Child present during argument between mother and
23 partner. HSE to contact --"
24

25 Sorry, I just can't make that out -- 12:02

26 A. "-- contact Gardaí on receipt of notification to
27 confirm contact details." Yes.

28 208 Q. The information which is set out there, were you happy
29 to sign off on that, superintendent? Did you think it

1 was adequate or correctly conveyed to the HSE what the
2 Gardaí -- what information the Gardaí were in
3 possession of at that time?

4 A. I was, Mr. Chairman. The situation in relation to
5 quite a number of referrals, what we do from time to 12:03
6 time is we would identify the appropriate person that
7 the social worker in Tusla or the HSE should notify in
8 relation to the matter. We would be reluctant
9 sometimes to put information that would be in our
10 possession on an open document that would be circulated 12:03
11 to Tusla or the HSE, so we would identify a liaison
12 person on the day for Tusla to make contact with in
13 relation to the matter, and on this occasion it was
14 Sergeant McGowan, who was also the district liaison
15 manager with the HSE and Tusla in relation to this 12:03
16 matter.

17 209 Q. Did you give any consideration to perhaps attaching a
18 copy of Ms. Simms' statement to the referral at that
19 stage?

20 A. Statements of evidence would never be attached to a 12:03
21 referral on the day to the HSE or Tusla. In 2013, when
22 we would have made these particular referrals -- we
23 have a practice now that wasn't there in 2013;
24 sometimes we would attach a very short précis to the
25 actual document, and that is done in agreement with our 12:04
26 colleagues in Tusla. But at that particular time we
27 didn't attach any documentation to the referrals; we
28 just identified the actual Garda member who was dealing
29 with the actual matter, and at that particular stage

1 the HSE would make contact with that particular member
2 and decisions would be made into the future in relation
3 to how that particular case would be managed. But in
4 this particular matter it was Sergeant McGowan, who was
5 also the district liaison manager within the Milford 12:04
6 Garda district, so I was more than happy on the day
7 that she would be identified to the staff on the HSE
8 and that this matter on the day would be followed up in
9 a professional manner.

10 210 Q. Okay. Do you think there is anything wrong with 12:04
11 statements of victims being forwarded to the HSE?

12 A. It's not practice, it's not the practice of providing
13 statements to the HSE or Tusla. The situation in
14 relation to the provision of statements or what is
15 contained in those particular statements, if the 12:05
16 designated officer within the HSE or Tusla, the social
17 worker dealing with the particular case, requires
18 either to see the statement or to actually review the
19 statement or the content of it, then they have to apply
20 to me, as the designated officer, for permission to do 12:05
21 that. And the common practice at this moment in time
22 is, we still don't supply them with the statement, but
23 under the Children First Guidelines and regulations we
24 allow them, on the day, to review the statements,
25 sometimes in redacted format, depending on what is 12:05
26 contained in the statement, but generally in an
27 unredacted format. And that particular situation
28 facilitated, they are allowed to view the statement,
29 make whatever notes, or otherwise, they wish from the

1 particular statement, but we do not, at this moment in
2 time, provide them actually with copies of the
3 statements in relation to these particular type of
4 reviews.

5 211 Q. I think you having signed the referrals, you posted 12:05
6 them to Mr. Hone on 10th October 2013. That appears at
7 page 405 of the materials. You say: "The attached
8 notifications are forwarded for your information
9 please", and you sign off on that.

10 A. That would be correct. The document was dated 10th 12:06
11 October 2013 from the district office in Milford and I
12 would have copied a copy of that particular
13 documentation to Sergeant McGowan, the HSE liaison
14 manager for the Milford Garda district.

15 212 Q. Okay. Now -- and that's in accordance with standard 12:06
16 procedure as being set out between yourself and now
17 Tusla, then the HSE?

18 A. Yes, the referral would go to the -- to the intake
19 officer with the HSE or Tusla, as it is now, and
20 irrespective of who makes the referral, a copy of the 12:06
21 referral is always sent to the district liaison manager
22 for the relevant Garda district.

23 213 Q. Now, the next involvement you seem to have had with the
24 referrals was, you received a letter dated 16th October
25 2013 from Mr. Hone, saying: "I acknowledge --" it's at 12:07
26 page 409 of the materials, and it's Appendix 42 to your
27 statement.

28
29 "I acknowledge receipt of the above notification, copy

1 attached. However, as there is no evidence of abuse
2 detailed, no further action will be taken from this
3 service until we receive more information. The
4 notification has been forwarded to Bridgeen Smith,
5 Assistant Team Leader, West Central Team, Letterkenny, 12:07
6 for information purposes only."
7

8 And that was copied to Sergeant McGowan, Bridgeen Smith
9 and Sergeant Walsh, who was in Letterkenny at that
10 time. Now, what did you understand from that letter 12:07
11 when you got it, Superintendent?

12 A. I basically understood, as per the referral on the day,
13 that the HSE were seeking further information in
14 relation to the actual referral. But I think it's
15 important for the Tribunal to note, Mr. Chairman, that 12:08
16 that letter that was dated 16th October from the HSE,
17 it didn't in fact arrive at my office until 22nd
18 October, and at that stage Sergeant McGowan already had
19 facilitated and had attended at a strategy meeting on
20 21st October with the HSE in relation to the matter. 12:08
21 So the information on the day that they were now
22 requesting from me in a correspondence dated 16th
23 October but only arriving on 22nd October, that already
24 had been facilitated on 21st October by way of a
25 strategy meeting with Sergeant McGowan. 12:08

26 214 Q. Okay. So did you know about the strategy meeting when
27 you got that letter on the 22nd?

28 A. I am aware of it, I am aware of it. I am not saying
29 when I knew about it, but I would have known on the day

1 that Sergeant McGowan had held the strategy meeting
2 with the HSE and in relation to the matter. I can't
3 tell you what exactly, what exactly I did, but I would
4 have known on the arrival of that particular letter
5 that the strategy meeting had been held. 12:09

6 215 Q. It's not something you refer to in your statement that
7 you were aware?

8 A. No, I haven't written documentation from Sergeant
9 McGowan confirming that particular fact, I hadn't at
10 that particular time. Because when I received that 12:09
11 letter on 22nd October, I did forward it to Sergeant
12 McGowan in correspondence dated 24th October, and that
13 was the day prior to my going on transfer to the
14 Buncrana Garda district so I had no further follow-up
15 in relation to that particular correspondence. 12:09

16 216 Q. Okay. So you transferred to Buncrana on the 23rd?

17 A. I transferred to Buncrana on the 25th.

18 217 Q. The 25th.

19 A. The day after the letter was actually --

20 218 Q. The day after the letter? 12:09

21 A. That it was sent to Sergeant McGowan.

22 219 Q. Okay. And you sent the letter, which you received on
23 the 22nd of October, to Sergeant McGowan on the 24th,
24 the day before you transferred?

25 A. That -- yes, yes, it's dated the day before I 12:10
26 transferred, yes.

27 220 Q. Okay. And if we just look at that letter,
28 superintendent. What you say, you are forwarding
29 Mr. Hone's letter, which is dated the 9th, which you

1 had received on the 22nd. And you say, it's at page
2 411 of the materials at Appendix 43:

3
4 "With reference to the above, the attached
5 correspondence from the HSE is forwarded for your 12:10
6 attention, please. Liaise with Bridgeen Smith relevant
7 to this referral and certify that following a
8 discussion on the matter and with full disclosure of
9 the facts to the HSE, that no further HSE intervention
10 will now take place." 12:10

11
12 So what were you trying to convey by way of that letter
13 to Sergeant McGowan?

14 A. I was basically asking her to certify, basically, that
15 from her contact with the HSE and in relation to the 12:10
16 strategy meeting, that a decision had been made that no
17 further follow-up was taking place in relation to the
18 matter.

19 221 Q. Okay. Well, you appreciate the strategy meeting isn't
20 referred to in that letter? 12:11

21 A. No, it's not, no, it's not referred to in the letter.
22 And I can't, I cannot say, I can't tell the Tribunal of
23 what time I became aware of the actual strategy
24 meeting. I wouldn't have been involved in the actual
25 strategy meeting or would have had no function to play 12:11
26 in relation to it.

27 222 Q. Okay.

28 A. But that's just forwarding all the correspondence that
29 I would have received in relation to it and asking --

1 because it was copied to Bridgeen Smith, the assistant
2 team leader, I was requesting Sergeant McGowan to
3 liaise with her, just, and certify that following her
4 discussions with her on the matter, which to me are --
5 I can only read into what I wrote, which implied that I 12:11
6 was aware that discussions had taken place in the
7 matter, that a full disclosure had taken place and the
8 HSE had proposed to sign off on it. And --
9 223 Q. Okay. In your statement to the -- sorry, I didn't mean
10 to cut you off. 12:12
11 A. No, no, it's okay.
12 224 Q. At page 196, at the very bottom of the page, what you
13 say is:
14
15 "On 24th October 2013, I provided Sergeant McGowan with 12:12
16 a copy of this reply --" that is Gerry Hone's
17 letter "-- and requested that she should liaise with
18 Ms. Bridgeen Smith, social worker HSE, to confirm that
19 there would be no further HSE intervention in this
20 matter. I am aware that the HSE confirmed to Sergeant 12:12
21 McGowan that they had closed their case in the matter."
22
23 Now, where does that information come from,
24 Superintendent? Because as I understand it, the HSE
25 didn't close their case on the matter. 12:12
26 A. I can't answer that question. I don't know the answer
27 to that question.
28 225 Q. Well, it's your statement, Superintendent.
29 A. Yes.

1 226 Q. So, I mean, if you look at your letter to - maybe this
2 might assist you - to Sergeant McGowan, it would appear
3 that you were under the impression that the referral to
4 the HSE wasn't going to be pursued further.

12:13

5
6 "... and certify that following a discussion on the
7 matter and with full disclosure of the facts to the
8 HSE, that no further HSE intervention will now take
9 place."

10 A. I was asking -- I was asking a question as opposed to 12:13
11 giving a -- you know, making a decision. It may well
12 have been implied in the correspondence on the day from
13 the HSE in relation to it, but I was asking a question
14 of Sergeant McGowan in relation to that particular
15 situation, because it was -- and I was asking her to 12:13
16 liaise with Bridgeen Smith relevant to the matter.

17 227 Q. Okay. Well, do you think you thought the HSE had
18 closed the case on the matter when you got the letter
19 from Mr. Hone?

20 A. Well, I think no is the answer, because they were 12:14
21 indicating that, in the absence of receiving further
22 information, they proposed to close it.

23 228 Q. OK.

24 A. But Sergeant McGowan on the day would have been tasked 12:14
25 with providing them with whatever follow-up information
26 that was required in relation to the matter and she was
27 the actual person -- she was identified on the form for
28 contact, for liaison by the HSE in relation to the
29 matter. It certainly would look like the

1 correspondence from the HSE on the day was sent, and I
2 think that was explained by the Tusla staff, was sent
3 by Mr. Hone, not with the knowledge on the day that the
4 actual strategy meeting had taken place.

5 229 Q. Well, it's just that you seem to be under the 12:14
6 impression when you made -- gave your statement to the
7 Tribunal, that statement is dated July of this year,
8 that you were aware "the HSE confirmed to Sergeant
9 McGowan that they had closed their case in the matter".
10 So, from that, you seem to have been under the 12:15
11 impression that, from Gerry Hone's letter, that they
12 had closed their case on the matter? Do you understand
13 what I --

14 A. If I represented that situation, then that is not --
15 that is not -- that is not true. I wouldn't have 12:15
16 sent -- I never received, I certainly never received a
17 reply from Sergeant McGowan for the correspondence
18 dated 24th October.

19 230 Q. Yes. That would appear to be the case.

20 A. Yes. So, I mean, then -- it may well be the way I have 12:15
21 represented in my statement, but that certainly
22 wouldn't be the case because I don't have actually any
23 confirmation on the day from Sergeant McGowan to the
24 effect that they did close their case, and I think we
25 now understand from evidence that was provided that 12:15
26 they didn't, in fact, close their case.

27 CHAIRMAN: It is just I can see the point of
28 Ms. Leader's position, because if you look at the Gerry
29 Hone letter, it seems very definite either it is

1 somebody who is very fed up and saying, look, this is
2 the end of the matter unless we get further
3 information, and they are putting it in a very strange
4 manner, or else they really are telling you, look, we
5 are closing our case unless you have got something 12:16
6 further to offer us, which usually means, well, you
7 have given us everything we thought you had so far. So
8 I don't know whether you misunderstood the letter, but
9 if you read it it's on its face, it's easily
10 misunderstood. And I know Mr. Hone has said, look, 12:16
11 this is a normal letter we send to the Gardaí and it's
12 kind of, not so much saying we are shutting the door,
13 but we are saying we need more information. It's just
14 very oddly worded, it would have to be said.

15 A. I think maybe, Mr. Chairman, like, I mean, it probably 12:16
16 would, as Mr. Hone had indicated, be a very
17 standard-type letter in that -- like, he sent it on
18 16th of October, but the strategy meeting didn't take
19 place until 21st of October, we didn't get the letter
20 until 22nd of October, and, in the meantime, Sergeant 12:16
21 McGowan had already liaised on the day with Tusla, she
22 already had liaised with Tusla in relation to the
23 matter, she had mentioned it to them orally and then
24 the strategy meeting was subsequently heard. So
25 Mr. Hone, when he sent the letter, it's kind of a very 12:17
26 standardised letter. I wouldn't have -- it wouldn't
27 have raised any significant concerns with me in
28 relation to what is contained in the letter because I
29 would have been aware that Sergeant McGowan was in

1 liaison with the HSE in relation to the actual
2 referral. It wouldn't have raised any concerns for me
3 now.

4 231 Q. MS. LEADER: Well, I suppose it could have been,
5 Superintendent McGovern, that you simply didn't know 12:17
6 about the strategy meeting and actually thought -- it
7 had happened on the 21st, you got the letter on the
8 22nd, and maybe you simply thought that the matter had
9 been finalised by the HSE, or you could have maybe,
10 alternatively, thought that the strategy meeting had 12:17
11 been held sometime prior to the letter going out, you
12 may not have been exactly thinking things through when
13 you sent the letter to Sergeant McGowan?

14 A. No, I suppose I can't answer definitively on the day
15 what the reasoning would be, but the letter I sent to 12:18
16 Sergeant McGowan, it was simply, on the day, looking to
17 find out whether, in fact, through liaison with
18 Bridgeen Smith in relation to the matter, that the HSE
19 had actually made a final decision that they were no
20 longer progressing the matter any further. 12:18

21 232 Q. Okay.

22 A. As I say, I didn't receive -- I wasn't there, probably,
23 to receive it, but I certainly didn't receive or I
24 don't have a response on my files in relation to the
25 actual correspondence that went to Sergeant McGowan on 12:18
26 24th of October. But I certainly, I can say definitely
27 to you, Chairman, I was aware that Sergeant McGowan had
28 liaised with the HSE in relation to the matter and that
29 she had been in liaison with them in relation to

1 providing the information that we had suggested on the
2 actual referral form would be provided. But I never
3 received any request either from Tusla or the HSE to
4 provide them with a copy of any of the statements that
5 we had used as part of our rationale for making the 12:19
6 referral in the first place either. But then again, I
7 was gone after 25th October.

8 233 Q. Okay. You see, Sergeant McGowan has said to us she
9 looked on your letter as having been overtaken by
10 having the strategy meeting, events which happened -- 12:19
11 by having the strategy meeting, she thought she had
12 done what Gerry Hone was asking her to do on the 21st.
13 That is my understanding of Sergeant McGowan's
14 evidence. But it would appear from taking Mr. Hone's
15 letter at face value and your follow-up on that on 24th 12:19
16 of October 2013 and what you said in your statement to
17 the Tribunal, that you thought the HSE's role in the
18 matter was finished at that stage. I don't know if
19 you'd care to comment on that in any way?

20 A. All I can say, Chairman, is I didn't receive a reply to 12:20
21 the 24th October correspondence so I didn't actually
22 receive a written reply for the letter that I sent to
23 Sergeant McGowan on 24th October 2013 because I simply
24 wasn't there. I certainly was fully aware that she had
25 been in liaison with the HSE in relation to the matter 12:20
26 and that she had provided them with further information
27 in relation to the actual referral. And I certainly --
28 and if I have represented that in my statement, then
29 it's not -- it's not a true reflection of my

1 understanding of it. I never was of the understanding
2 that the HSE had closed their files in relation to the
3 matter because I wouldn't have been aware of whether
4 they closed them or didn't close them. I can't say
5 that. I wouldn't have been -- wouldn't have had access 12:20
6 to their actual files.

7 CHAIRMAN: I am sorry to intervene, Ms. Leader, but
8 it's touching on a point that may be of significance.
9 Did you have an awful lot of experience of the HSE, did
10 you? 12:21

11 A. Oh, I would have had significant experience of the HSE,
12 yes. I would have been --

13 CHAIRMAN: The letter from Gerry Hone, I mean, I am
14 being told that is kind of a standard letter that they
15 send in relation to cases and doesn't really mean what 12:21
16 it says. It kind of says we need further information,
17 as opposed to we are actually shutting things down.
18 And I am just wondering had you seen a letter like that
19 before?

20 A. Oh, definitely. That is what I am saying, it never 12:21
21 raised -- it wouldn't have raised any concern with me
22 in relation to the receipt of that particular letter
23 because, I mean, the situation would have been as
24 represented on the actual referral forms. We sent the
25 referral forms, we identified the Garda member that is 12:21
26 required to liaise in relation to, and look at -- and
27 that was a general understanding. And on this occasion
28 I would have been more than satisfied that there would
29 have been nothing lost in the translation of it because

1 Sergeant McGowan was actually the district liaison
2 manager with the HSE so she was fully familiar on the
3 day with the whole process and procedures and she was
4 familiar with this particular case and she would have
5 been liaising with the HSE in relation to it. 12:22

6 CHAIRMAN: So it was up to her; you didn't seem to be
7 pushing it one way or the other?

8 A. No, well once I would sign off as the designated
9 officer on the referrals, it goes over to the HSE
10 liaison manager, whether it would be Brigid McGowan as 12:22
11 the HSE liaison manager dealing with it specifically
12 herself, or another Garda member, she would
13 subsequently have the meetings with the HSE, and where
14 cases on the day are finalised, then the sign-off
15 document would be done between both agencies, and I 12:22
16 wouldn't have any further involvement in it except I
17 received a letter, a particular letter, not one like
18 what Mr. Hone wrote, but a particular letter requesting
19 to access to documentation that we would have on our
20 investigation files. 12:22

21 CHAIRMAN: Yes. And then you wouldn't have necessarily
22 granted that; now you would be much more likely to do
23 it?

24 A. No, even, like I -- the earlier Children's First policy
25 and procedures -- 12:22

26 CHAIRMAN: We will not go into that because I am not
27 sure the Children's First thing is helping terribly
28 much. But I do understand there's been a change of
29 policy. Then, you wouldn't have given statements,

1 still now you don't give statements, but now you would
2 allow a social worker to read and take notes and you
3 would now provide a précis in, I suppose, the more
4 complicated cases which require a précis.

5 A. Well, I think even initially in -- the first policy was 12:23
6 there, we always -- part of that policy was, we signed
7 off between ourselves and the HSE and there was an
8 agreement or understanding for the sharing of
9 information, so we would have shared the information
10 that time from the statements even then, we would have, 12:23
11 yeah, we would have given them.

12 CHAIRMAN: No, that's fine. It's just -- I was just
13 wondering. Sorry for interrupting, Ms. Leader.

14 234 Q. MS. LEADER: A few more questions, Superintendent.
15 There is a note in your diary on the 11th October 2013, 12:23
16 it's at page 2462. Sergeant McGowan seems to have said
17 to you that "re Keith Harrison, possible couple back
18 together. Withdrawal of complaint."
19 Can you remember receiving that information?

20 A. Well, it's a contemporaneous note in my journal, so, 12:24
21 yes, I received that information from Sergeant McGowan.

22 235 Q. And do you think that it's any way in your mind when
23 you wrote the letter of the 24th October to Sergeant
24 McGowan of possibly Ms. Simms and Mr. Harrison being
25 back together again, that the HSE matter would not be 12:24
26 pursued any further, do you think?

27 A. No, there's no correlation between the two, the entry
28 in my journal and the actual report of 24th of October.
29 None, none, Mr. Chairman.

1 236 Q. All right. And in relation to the meeting of the 8th
2 October and you referring the matter to the HSE, what
3 was your intention at that time; was it in any way to
4 punish Garda Harrison or to victimise him in any way or
5 to pursue him in a very vigorous way or anything like 12:25
6 that? why were the referrals made?

7 A. There was no motivation against Garda Harrison in
8 relation to the referrals. This was standard Garda
9 policy and procedure in relation to a situation where a
10 child was present during a domestic-related incident 12:25
11 and may well have witnessed something that would cause
12 emotional trauma to the actual child or there was of a
13 child welfare issue identified. It's an automatic
14 mandatory requirement on us to refer these matters to
15 the HSE or Tusla, and, after that, we leave those 12:25
16 matters in consultation with them as to what actions
17 they take in relation to it.

18 237 Q. And as to the mood of the meeting on 8th of October
19 2013, was it -- was it hostile towards Garda Harrison
20 or was the taking of the statement from Ms. Simms 12:25
21 viewed in any way as a way to get at Garda Harrison?

22 A. The meeting, Mr. Chairman, wasn't hostile towards
23 anybody. It was a very, very open and frank
24 discussion. There was no hidden agendas at the actual
25 meeting. The statement was produced, it was gone 12:26
26 through, and decisions were made in relation to what
27 responsibilities people at that meeting had in relation
28 to the content of the statement and we all left the
29 meeting and undertook what we were required to do as

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agreed at the meeting.

MS. LEADER: Thanks very much. If you would answer any questions.

CHAIRMAN: We will leave it for an hour.

12:26

THE HEARING ADJOURNED FOR LUNCH

1 THE HEARING RESUMED, AS FOLLOWS, AFTER LUNCH:

2
3 MS. LEADER: I am finished with this witness, sir.
4

5 SUPERINTENDENT MCGOVERN WAS CROSS-EXAMINED BY

13:33

6 MR. HARTY:

7 238 Q. MR. HARTY: Superintendent McGovern, I appear on behalf
8 of Garda Harrison. And I am just going to ask you,
9 just briefly in relation to the, and as quickly as we
10 can, in relation to the earlier incidents that you were
11 involved with. Thank you, by the way, for assisting in
12 typing your notes. It's a lot easier to read than your
13 handwriting.

13:33

14 A. I appreciate that, yes.

15 239 Q. The first question I really have to ask you is that you
16 record in your notes in relation to the incidents, and
17 it's at page 2456, it's just a very brief matter, that
18 our discussion with Superintendent English about Garda
19 Harrison's presence in Buncrana and the issue as it was
20 reported to you was that the unit in Buncrana won't
21 work with him now. I take it that's your recollection
22 of the conversation with Superintendent English?

13:33

13:34

23 A. Yeah, that's correct. That's the note I would have
24 made of it.

25 240 Q. And those were the issues that were pointed out to you
26 in your discussion with Superintendent English?

13:34

27 A. Yeah, yeah, they were just briefly the issues that were
28 raised when I spoke to Superintendent English.

29 241 Q. Yes. Then if we move on to page 2457, and at 2:10pm,

1 the section there, Sergeant McGowan has brought to your
2 attention the anonymous letter, isn't that correct?

3 A. She has indeed, yes.

4 242 Q. Did she make you aware that she requested a copy of the
5 letter rather than it being offered to her? 13:35

6 A. No, I don't think it was an issue of discussion as to
7 whether she requested the letter or whether the HSE
8 undertook to provide her with a copy of it, Chairman.

9 243 Q. Yes. And was it that she related the letter to you or
10 that she showed you the letter at that stage? 13:35

11 A. I can't answer that question definitively,
12 Mr. Chairman. Certainly on the day she related to me
13 the fact on the day of the existence of the letter and,
14 as I've indicated, I subsequently received a copy of
15 that letter from Sergeant McGowan, I asked her to 13:35
16 forward to me a copy of that letter, so I would be of
17 the understanding that maybe I didn't actually see the
18 letter at the time, but I requested her to forward on
19 to me an actual copy of the letter and she subsequently
20 done that on the 10th February 2012. 13:36

21 244 Q. The reason I ask you that is that it is related to you
22 there that, is it that Sergeant McGowan was aware that
23 Keith Harrison was violent to wife, or is that what the
24 letter had said?

25 A. That's my understanding of what the letter had said. 13:36

26 245 Q. And finally, I'm just confused, when we move on to the
27 503, are they sending a formal referral? I take it
28 were the HSE sending a formal referral for a criminal
29 investigation, is that correct?

1 A. That's in relation to the anonymous letter, we're still
2 talking about the anonymous letter?

3 246 Q. Yes, exactly.

4 A. No, Chairman, as I've indicated earlier on, we did not
5 receive a formal referral in relation to the actual 13:37
6 letter. What was sought by the HSE was information on
7 the day to assist them in assessing the content of the
8 actual letter, and one of those things was provision of
9 an address for Keith Harrison and Marisa Simms.

10 247 Q. But why would that require a formal referral? 13:37

11 A. As I said, we didn't actually get a formal referral.

12 248 Q. Yes.

13 A. There was no -- there was no formal referral made by
14 the HSE.

15 249 Q. Yes. 13:37

16 A. It would have been a request on the day for information
17 as part of their inquiries in relation to this
18 particular situation and a possible child welfare
19 issue.

20 250 Q. You see, where I am confused is that, why are you 13:37
21 mentioning are they sending a formal referral? What
22 did you mean by that in your notes?

23 A. It's just a question whether they, in fact, on the day
24 were formally referring the content of the letter to us
25 on the day for further investigations by us, or 13:37
26 whether, in fact, they were simply looking for
27 information on the day to assist them in evaluating the
28 actual letter. The letter went to them, so, as a
29 result, it wasn't a referral to us; it was a referral

1 to the HSE.

2 251 Q. And, in fact, the letter didn't contain any criminal
3 allegations against anybody.

4 A. The letter was anonymous, so it represented certain
5 situations, and the HSE felt the necessity to inquire 13:38
6 into certain aspects of the letter and they requested
7 Sergeant McGowan, as the liaison manager with them, for
8 certain information to assist them in doing that, and
9 that's the reason why it was brought to my attention
10 and the subsequent follow-up inquiries I done with 13:38
11 Superintendent Coen in Ballyshannon in relation to the
12 matter.

13 252 Q. Yes. Did you receive a copy of the anonymous letter?

14 A. Yeah, and that's why -- like, the initial contact on
15 the 9th February I had with Sergeant McGowan, as 13:38
16 represented in my statement, it certainly would appear,
17 and my notes would appear, that it was an oral
18 conversation, so, in fact, I'd be happy that I didn't
19 actually see the letter. I requested a copy of the
20 letter and I subsequently received that as per the 13:39
21 correspondence of the 10th February and there was a
22 copy of the actual anonymous letter attached to that.

23 253 Q. And what did you do with that anonymous letter then?

24 A. I referred it to superintendent in Ballyshannon seeking
25 an up-to-date address for Keith Harrison. 13:39

26 254 Q. Okay. And do you know did it go up the line to the
27 chief superintendent for direction?

28 A. Not on that particular date, no, not on that particular
29 date. My only inquiry initially in relation to it was

1 what had been requested by the HSE through Sergeant
2 McGowan, was that we would seek an up-to-date address
3 in relation to Garda Harrison and his partner Marisa
4 and the family.

5 255 Q. When did you forward it to the chief superintendent's office? 13:39

6
7 A. To the best of my recollection, I would have -- I would
8 have forwarded it on on the -- I suppose I would have
9 forwarded it on, as far as I understand, on the --
10 possibly on the 29th February. 13:40

11 256 Q. 29th February?

12 A. Yes.

13 257 Q. Why did you forward it on?

14 A. I suppose I was bringing -- I was bringing a number of
15 issues to the attention of chief superintendent 13:40
16 Letterkenny at that particular stage. I already -- I
17 had received at this stage my reply from the
18 superintendent in Ballyshannon and I subsequently
19 became aware that Garda Harrison and his partner were
20 living in the Letterkenny area, so, as a result, I 13:40
21 brought that information to the attention of chief
22 superintendent Letterkenny and I requested him to bring
23 those matters, all under confidential cover, to the
24 attention of superintendent Letterkenny, in the event
25 of a similar request for a response for an emergency 13:40
26 callout to address that Garda Harrison and Marisa Simms
27 may well be living at.

28 258 Q. This is the anonymous letter we're talking about. It's
29 a year after these threats. And I'm asking why the

1 anonymous letter had to be processed up the line?
2 A. The anonymous letter fell into the outstanding
3 inquiries in relation to the original threat of 2011
4 that hadn't been finalised. As I have already
5 indicated, a current address for Garda Harrison and 13:41
6 Marisa Simms was not available. Sergeant Gillespie on
7 the day had sought out that particular address, he said
8 he had contacted -- made attempt to contact Garda
9 Harrison and Marisa and he also had called to the
10 address at Tir Argus in Churchill, and Garda Shevlin 13:41
11 had indicated that he believed they possibly were
12 living in the Thornbury area in Letterkenny, so, as a
13 result, I made an initial inquiry in relation to the
14 follow-up, and also, I had been writing to Sergeant
15 Wallace, the crime prevention officer, who had not yet 13:41
16 completed the final review in relation to security
17 advice for both Keith Harrison and Marisa Simms, and he
18 had also indicated to me that he had not an up-to-date
19 address in relation to facilitate that
20 particular contact. So I had originally written to the 13:41
21 superintendent Ballyshannon in relation to that aspect,
22 hadn't received a reply and, as a result, I made a
23 second inquiry on the day with the superintendent in
24 Ballyshannon in relation to the matter, so the two of
25 them ran into each other. It was just coincidental. 13:42
26 There was nothing motivated in it. They just ran into
27 each other.
28 259 Q. Do you understand that that letter was a letter which
29 was received anonymously by the HSE, it was given to

1 Sergeant McGowan at her request. There was no reason
2 for that to appear on Garda Harrison's personnel file,
3 which is invariably where it was going to end up if it
4 was passed up the chain, isn't that correct?

5 A. Not necessarily appear on Garda Harrison's personnel 13:42
6 file. Not all correspondence in relation to a member
7 of the force appears on their personnel file.

8 260 Q. Well, we know that it was brought up again the
9 following year, isn't that correct? The issue of the
10 anonymous letter was raised again by Sergeant McGowan. 13:42
11 We know that it was something that you must all have
12 been aware of at your conference on the 8th October, so
13 I'm assuming that it was in the office on the 8th
14 October when you were discussing the statement of
15 Marisa Simms? 13:43

16 A. But to be clear, not taken or removed at that stage
17 from Garda Harrison's personal file. It wouldn't, it
18 wouldn't have been removed from Garda Harrison's
19 personal file or stored on it. It was part of
20 investigation material, inquiries that were carried out 13:43
21 in conjunction with the HSE. So it wasn't actually on
22 his personal file.

23 261 Q. Well, where was it?

24 A. It would have -- well, it would have been in -- it
25 would have been with Sergeant McGowan, it would have 13:43
26 been with -- at this stage it would have been with --
27 it had gone to chief superintendent Letterkenny and it
28 would have gone to superintendent Ballyshannon in
29 relation to the inquiry.

1 262 Q. But it must have been filed somewhere, and what file
2 was it put on?

3 A. It would be -- it would be filed as part of the actual
4 administration files for that particular year at the
5 time the actual inquiry was done. 13:43

6 263 Q. But you said it was sent on in conjunction with the
7 request for up-to-date addresses for Garda Harrison. I
8 assume the request for up-to-date addresses for Garda
9 Harrison would feature on part of a file relating to
10 Garda Harrison specifically? 13:44

11 A. But this was an inquiry -- the anonymous letter was an
12 inquiry from the HSE, so the information that we were
13 seeking was to update the HSE in relation to inquiries
14 that they had made. So the information that was
15 required was passed on on the day to the HSE. It was 13:44
16 all -- Sergeant McGowan brought it to the attention of
17 the HSE.

18 264 Q. Sergeant McGowan never brought any address, or there's
19 no evidence to suggest that Sergeant McGowan contacted
20 the HSE with an address for Garda Harrison. 13:44

21 A. Sergeant McGowan brought that address to the attention
22 of the HSE, and they subsequently on the day -- she
23 also brought it to the attention of Sergeant Walsh in
24 Letterkenny, who was the HSE liaison manager for that
25 area and for the address area for which we had required 13:44
26 an address from the superintendent in Ballyshannon.
27 She brought those matters to attention of the HSE. She
28 also was asked by me, and correspondence on file
29 reflects that, she was asked by me to bring it to the

1 attention of Sergeant Walsh, the HSE liaison manager
2 for the Letterkenny Garda district. And as a
3 consequence, I also wrote a report. There was three
4 reports written on that particular day, on the 29th of
5 February. I also wrote a report to chief 13:45
6 superintendent Letterkenny updating him in relation to
7 the situation and asking him to bring these matters on
8 the day to the attention of the superintendent
9 Letterkenny in the event of a necessity on the day to
10 respond to an emergency situation so that he would know 13:45
11 the address where Keith Harrison and Marisa Simms were
12 identified as having a residential address at that
13 particular time.

14 265 Q. At this stage Keith Harrison was stationed in Donegal
15 Town, isn't that correct? 13:45

16 A. That would be correct.

17 266 Q. And the evidence from Sergeant Durkin is that there was
18 no difficulties working with him, as far as he was
19 aware at the time. There were some issues in relation
20 to road traffic matters which arose later on, but that 13:45
21 there was no difficulties working with him. So my
22 question to you, Superintendent, is: why didn't
23 Sergeant Wallace just ring Donegal station or ring
24 Sergeant Durkin and ask him to ask Garda Harrison where
25 he was living? 13:46

26 A. I can't answer that question, Mr. Chairman, for
27 Sergeant Wallace. All I know is that when I queried
28 the follow-up crime prevention aspect of the original
29 Tir Argus incident with Sergeant Wallace in December

1 2011, he made me aware on the day that he didn't have
2 an up-to-date, and he provided that in writing to me.
3 So I subsequently on the day wrote to the
4 superintendent in Ballyshannon to acquire the address
5 for him so that he could do that particular follow-up, 13:46
6 and that's the only motivation in it. There was no
7 other motivation in it.

8 267 Q. I appreciate that, but if that's the case why not
9 simply ask the man his address? This was in his
10 interest, this was with regards to his safety. And why 13:46
11 not simply ask the man his address?

12 A. Chairman, all I can say to that is, I already had
13 requested Sergeant Gillespie, who was dealing with the
14 actual Tir Argus incident, to liaise with Garda
15 Harrison and Marisa Simms and the address that they had 13:47
16 in Churchill in relation to an updated address.
17 Sergeant Gillespie replied to me, following
18 consultation on the day with Garda Shevlin in
19 Churchill, that he was unable -- he certainly had
20 called to the address in Tir Argus, and there was 13:47
21 nobody living at that particular address, and that he
22 had attempted to make contact with Marisa Simms and
23 Garda Harrison in relation to acquiring an address and
24 had been unsuccessful. So, for that reason, Chairman,
25 I wrote to the superintendent in Ballyshannon where 13:47
26 Garda Harrison was stationed, under confidential cover,
27 so that it wasn't a matter on the day that it was being
28 circulated around the Ballyshannon district. It was
29 under confidential cover to acquire a follow-up address

1 for Garda Harrison. So it was a matter on the day,
2 that it wasn't a general inquiry to try and highlight
3 Garda Harrison or anything to do with him. It was
4 just, it was a confidential inquiry to find out where
5 his address was. So, number one, and -- number one, I 13:47
6 could provide it to Sergeant Wallace, but, as I said,
7 as a result of the anonymous letter, the actual two
8 inquiries rolled into each other, and the reminder I
9 was sending to the superintendent in Ballyshannon, who
10 had not at that stage provided me with an address, he 13:48
11 was subsequently getting a second inquiry in relation
12 to the anonymous letter. And I suppose it was, it was
13 a similar type inquiry, but there was an additional
14 element to it because of what was contained in the
15 actual anonymous letter, I asked additional questions. 13:48
16 268 Q. The final thing just on that page, and it's the final
17 thing in relation to these matters, is just in relation
18 to the entry on the 29th May 2013, which is at the
19 bottom of that page. That's it there. We will just go
20 back up again. Could you assist me, "possible rear end 13:48
21 by Garda Harrison who was at fault"?
22 A. That's the note I would have made from the information
23 provided to me when I received the call in relation to
24 the matter.
25 269 Q. Just, it wasn't a rear-ending? 13:49
26 A. That's -- all I can say, Chairman, is that's the note
27 that I made as a result of the phone call that I had
28 received. I subsequently was provided with a report in
29 relation to the actual collision and I made my referral

1 and you have the documentation --

2 270 Q. Yes.

3 A. -- on file, I made my referral on the day to GSOC in
4 accordance on the day with the up-to-date information
5 from the investigating officer in relation to the 13:49
6 matter, and that was subsequently evaluated by Mr. Liam
7 Hickey on behalf of GSOC. I never represented, and I
8 have to say, Chairman, I never represented to GSOC that
9 Garda Harrison was responsible for the collision. That
10 was never the situation. 13:49

11 271 Q. In fact, I was more concerned about what was being
12 represented to you. I'm not suggesting at any stage
13 that you misrepresented anything. It's just I'm
14 interested in your notes as to what was represented to
15 you. Essentially in correspondence -- 13:49

16 A. No, I appreciate that, I appreciate that, Chairman.
17 It's just, that's the note I made in relation to the
18 telephone inquiry that was made with me.

19 272 Q. Now, if we then move on to your notes to page 2458, and
20 at the bottom of that page, at 5:57pm. These are typed 13:50
21 notes just for the assistance -- I take it that the
22 typing, there isn't a continuation of day, that's a new
23 day, I take it, on the 24/9? The earlier references,
24 just for the assistance of the Tribunal, deal with the
25 29th May, isn't that correct? 13:50

26 A. Yeah. The notes that I provided to the Tribunal are
27 the ones that relate exclusively in the day to
28 contacts, or otherwise, in relation to Garda Harrison.

29 273 Q. They're not a continuous document, as such?

1 A. No, no, no. My contemporaneous notes are there for
2 anyone that wishes to view them.

3 274 Q. Yes.

4 A. They're contained -- are in a series of journals.

5 275 Q. And you note there that Sergeant McGowan contacted you 13:51
6 at that stage on the 24th September 2013, and that she
7 had been speaking with Sergeant Durkin, Donegal Town.
8 She doesn't indicate that she received a report at that
9 stage from Sergeant Durkin, isn't that correct?

10 A. No, she doesn't. 13:51

11 276 Q. "There's ongoing issue with Ms. McDermott-Simms,
12 proposed to put him out. Address in Churchill not
13 specific. Will let me know if it is discovered."
14 And that is what she said to you?

15 A. Yes, that's the note I would have recorded. They are 13:51
16 brief notes I recorded of the contact from her.

17 277 Q. You were -- and you're absolutely certain you had that
18 conversation with Sergeant McGowan on the 24th
19 September 2013?

20 A. They're part of my contemporaneous note, and yes, yes 13:51
21 is the answer Mr. Chairman, yes.

22 278 Q. Would it surprise you that Sergeant McGowan's evidence
23 to this Tribunal was that her first involvement in this
24 was 1st October 2013?

25 A. I don't recall, Mr. Chairman, what Sergeant McGowan 13:52
26 said in relation to the matter. All I can say is, I
27 can only rely on the notes that I made in relation to
28 the matter. They are contemporaneous. And I made
29 those entries on the 24th September 2013 in relation to

1 my contact with Sergeant McGowan.

2 279 Q. Just in fairness to you, because it is a matter which
3 Sergeant McGowan takes -- appears to take issue with
4 you on, I will just direct you to her statement at page
5 707. And at the bottom of that page, just here, her 13:52
6 first mention of any involvement with the statement of
7 complaint of Marisa Simms is on 1st October 2013, when
8 she says she received a phone call from Sergeant Jim
9 Collins. I know it's not for you to answer, but you're
10 certain that your contemporaneous notes are correct? 13:53

11 A. Yes, Chairman.

12 280 Q. You mention that at that stage you referred to what you
13 called a catalogue of incidents in relation to Garda
14 Harrison. I take it by that you're referring to the
15 one incident in April of 2013? 13:53

16 A. That and what incidents were represented as having
17 occurred in relation to this particular conversation
18 that she had with Sergeant Durkin.

19 281 Q. So two incidents, as such?

20 A. Yes. And a representation that there had been other 13:53
21 incidents.

22 282 Q. And Inspector Harrison had made you aware of that by
23 way of a talk?

24 A. Well, the incident on the 1st April 2013, I wasn't
25 actually in the Milford Garda district for that 13:54
26 specific incident, but I would have been aware of the
27 actual incident having occurred.

28 283 Q. How were you aware? How did it come up?

29 A. Well, Inspector Harrison would have been covering for

1 me for the months that I was absent. So there was
2 never any understanding that I wasn't coming back to
3 the Milford district, so the responsibility for the
4 Milford district as the superintendent still rested
5 with me. Inspector Harrison on the day was acting in 13:54
6 that capacity. So any issue that he would have felt
7 that may have been relevant to me or he felt that I
8 needed to hear about, he would have made me aware of
9 and he mentioned that particular incident. It was
10 significant at the time. 13:54

11 284 Q. Well, in fact, it was a wild goose chase?
12 A. Well, irrespective of whether it was a wild -- your
13 representation of it as wild goose chase. The incident
14 happened, it was reported to the Gardaí in Letterkenny
15 and subsequent follow-up investigations and inquiries 13:54
16 were carried out in relation to it.

17 285 Q. And no statements were taken, the Gardaí were satisfied
18 that Ms. Simms' recounting of the events was very
19 different to what had been reported to them in the
20 Garda station. It was a wild goose chase; a man who 13:55
21 had had plenty to drink came into the Garda station and
22 reported garbled information, the Gardaí correctly
23 acted on it, but it was clearly garbled information and
24 it was a wild goose chase?

25 A. The matter wasn't the subject of a criminal complaint 13:55
26 by Marisa Simms in relation to the incident, so, as a
27 result, there was no follow-up criminal investigation
28 carried out in relation to the incident.

29 286 Q. You then, having had your conversation with Sergeant

1 McGowan, what did you do? Were you off for the next
2 couple of days or how did it come about that you ring
3 the chief superintendent on the 27/9?

4 A. Because of the fact that the incidents that were
5 represented to me involved a serving Garda member, I 13:55
6 spoke to Chief Superintendent McGinn in relation to the
7 matter because I was of the view that she needed to be
8 aware of a developing situation in relation to a
9 serving Garda member within the Letterkenny division,
10 Donegal division. 13:56

11 287 Q. And over the course of that morning and early
12 afternoon, or that day, in fact, you spoke to her on at
13 least two occasions in relation to it?

14 A. I did. Initially when I spoke to her she wasn't in a
15 position to -- she wasn't in a position on the day to 13:56
16 speak to me, so there was a subsequent follow-up call
17 to Chief Superintendent McGinn and a decision made in
18 relation to the matter at 4:40pm on that particular
19 day.

20 288 Q. You then had a conversation at 4:30 where she advised 13:56
21 you that she proposed to appoint Inspector Sheridan,
22 and I understand your evidence-in-chief to be that she
23 was -- Inspector Sheridan was new to the district and,
24 as such, was an appropriate person to investigate it, a
25 fresh pair of eyes? 13:57

26 A. That is my understanding of the chief superintendent's
27 view in relation to it, but that is something that
28 Chief Superintendent McGinn, I'm sure, will be in a
29 position to explain herself. But Inspector Sheridan

1 was new to the division, so it was -- she made a
2 decision on the day that she would appoint Inspector
3 Sheridan to carry out a review of incidents of a
4 domestic nature or a criminal nature involving Garda
5 Harrison and his partner, to see what course of action, 13:57
6 or otherwise, she deemed appropriate in relation to the
7 matter.

8 289 Q. I assume that a section 102 referral would go across
9 the desk of the chief superintendent in any division;
10 they're not common? 13:57

11 A. Sorry?

12 290 Q. I presume a section 102 referral would go across the
13 desk of a chief superintendent in a division?

14 A. All section 102 referrals are copied to the chief
15 superintendent. 13:57

16 291 Q. Yes. I mean, they're not a common thing, thankfully?

17 A. Well, I've made quite a number of section 102 referrals
18 since I was promoted to the rank of superintendent in
19 2005. So, for me, I'm going to have to say they sadly
20 did become common at different times of my career. 13:58

21 292 Q. But Chief Superintendent McGinn would have been well
22 aware that Inspector Sheridan was involved already with
23 investigating Garda Harrison, because Inspector
24 Sheridan was involved in investigating the road traffic
25 accident in May? 13:58

26 A. Well, the road traffic collision on the day was a
27 matter that was referred to GSOC in accordance with
28 section 102, and any inquiries that Inspector Sheridan
29 would have been carrying out in relation to that

1 particular matter were at the bequest of the Garda
2 Síochána Ombudsman Commission, not at the bequest of
3 Chief Superintendent McGinn.

4 293 Q. But she was involved, you were certainly speaking to
5 her at length at least over the course of the day, 29th 13:59
6 May. And that's at page 2457 and 2458.

7 A. Mr. Chairman, I don't think there's any issue in
8 relation to Inspector Sheridan's involvement in that
9 particular investigation. She was the inspector on the
10 day in Letterkenny at the time that this report was 13:59
11 generated to me and required a referral under section
12 102, and it is common practice between ourselves and
13 GSOC in the event of a section 102 referral, if the
14 district officer is not available to liaise or to
15 assist GSOC in relation to their inquiries under 13:59
16 section 102, then we generally appoint an inspector on
17 the day to liaise with them in relation to that aspect
18 of the investigation, we provide a contact number.
19 Inspector Sheridan was the contact in relation to this
20 particular investigation or her details were supplied 14:00
21 by me to Mr. Liam Hickey as part of my referral in
22 relation to 102.

23 294 Q. And it possibly is more a matter for Chief
24 Superintendent McGinn. But I just have to say to you
25 that the assertion that was made to you that she was a 14:00
26 completely fresh pair of eyes, doesn't apply. She was,
27 in fact, the one person present in Letterkenny who had
28 investigated Garda Harrison?

29 A. No. As I said, Mr. Chairman, Inspector Sheridan was

1 not investigating Garda Harrison in relation to section
2 102 referral. She was assisting the GSOC investigation
3 team in relation to inquiries that they wished to be
4 carried out in relation to it. I think it is important
5 that we clarify between a section 102 referral in 14:00
6 relation to a road traffic collision that Garda
7 Harrison was involved in and Inspector Sheridan's
8 request by the chief superintendent to review domestic
9 or otherwise related incidents involving Keith Harrison
10 and Marisa Simms. Two totally different situations, 14:00
11 Mr. Chairman.

12 295 Q. Sorry, can I just clarify on that. Do you say it was
13 Inspector Sheridan who requested to review or that the
14 chief superintendent requested Inspector Sheridan?

15 A. No, Chief Superintendent McGinn indicated that she was 14:01
16 going to appoint Inspector Sheridan to review, sorry.

17 296 Q. It's just when you answered the last question, you
18 actually flipped those around by accident.

19 A. Well, apologies.

20 297 Q. There was no point leaving it on the transcript. 14:01
21 A. No, absolutely no difficulty.

22 298 Q. You then had another talk with Sergeant McGowan on the
23 30th December, and could we go to your handwritten
24 notes in respect of that, because I'm a little confused
25 as to how the entry GSOC can enter into it. I will see 14:01
26 if I can pull them up. Page reference?

27 MS. LEADER: 496, I think.

28 MR. HARTY: 496. Thank you.

29 299 Q. Do you see there, I think that's the entry there. It

1 appears to be Sergeant McGowan. Can you read the
2 handwritten notes there? Or even if you have it in
3 your own hard copy, original copy?

4 A. I have the typed copy. I just want to look at the
5 actual handwritten version, if I may. I may need to 14:02
6 pull out my journal in relation to the matter.
7 CHAIRMAN: It may be best you do.

8 A. Yes.
9 MR. HARTY: It might be easier.

10 CHAIRMAN: Would you mind? 14:02

11 A. No problem.

12 300 Q. MR. HARTY: They appear on page 13, if I am reading
13 correctly.

14 A. Yeah. That's the type, the typewritten version of my
15 notes, Chairman, that's the true reflection of what's 14:03
16 written in my journal. And it may well be,
17 unfortunately, the notes, that may well be unrelated,
18 it is unrelated to Keith Harrison, but it may well be
19 just some conversation or -- I may have had with
20 Sergeant McGowan in relation to GSOC. And that's 14:04
21 not --

22 301 Q. It's not related to Garda Harrison?

23 A. No.

24 302 Q. It was something else in the discussion with Sergeant
25 McGowan? 14:04

26 A. Certainly. Like, I mean, there are other notes there
27 that are not relevant to, actually, Garda Harrison.
28 But no, there was no --

29 303 Q. Right.

1 A. I'd be very happy on the day there was no issue or no
2 discussion in relation to Garda Harrison and GSOC with
3 Sergeant McGowan.

4 304 Q. She made you -- who made who aware of issues with Keith
5 Harrison? 14:04

6 A. She would have been speaking to Sergeant Durkin in
7 relation to the matter.

8 305 Q. So she made you aware, is it?

9 A. Yes, she made me aware.

10 306 Q. So this was new information that she was forwarding to 14:04
11 you in the station?

12 A. Certainly, yeah, in relation to what appeared to be a
13 developing situation, yes.

14 307 Q. "And to make some inquiries re his return to work or
15 her workplace." 14:05

16 So you had asked her to carry out some inquiries in
17 relation to that?

18 A. Yeah. At that moment in time, it was represented that
19 he was now living again in the Churchill area and I
20 wanted to establish that -- and, of course, it was 14:05
21 represented in relation to a situation that was
22 upcoming at the weekend, so I wanted inquiries carried
23 out to find out where, if we could establish exactly in
24 the day where they actually were and what the working
25 arrangements for Garda Harrison was for that particular 14:05
26 weekend.

27 308 Q. And then at 3:30pm, "material photocopy". What is that
28 material? Perhaps if we go back to the typed notes on
29 the screen.

1 A. I'll go back.

2 309 Q. It's 2459.

3 A. This is again on the 30th September, yes.

4 310 Q. Yes. At 3:30pm you have entered "Sergeant McGowan
5 material photocopied". 14:05

6 A. Yeah. Again, that's an entry that is unrelated to
7 Garda Harrison.

8 311 Q. And can I take it that the next entry as well in
9 relation to "Emma"?

10 A. Yes. 14:06

11 312 Q. And "phones house"?

12 A. Yes. It's something that is a matter on the day that,
13 in fact, should have been redacted out.

14 313 Q. Yes.

15 A. It's not -- and it was typed in -- it's not relevant to 14:06
16 Garda Harrison.

17 314 Q. The next person you spoke to then is Sergeant Forkin,
18 and is that because Sergeant McGowan had gone off duty
19 at that stage and --

20 A. Well, I'm not sure whether Sergeant McGowan had gone 14:06
21 off duty at that particular time. The reason why I
22 spoken to Sergeant Forkin, because Sergeant Forkin is
23 the sergeant in charge of the district headquarter
24 station. Sergeant McGowan would be the sergeant in
25 charge of Kerrykeel, which is a substation of the 14:06
26 district headquarter station. So if in the event of
27 any emergency call coming in after general working
28 hours of the substations, then it would come to Milford
29 Garda Station, and I wanted Sergeant Forkin to be aware

1 of the situation, just in the event of some call for
2 emergency follow-up or assistance were received in
3 relation to the situation.

4 315 Q. And then your next entry is in relation to a
5 conversation with Sergeant McGowan and you've directed 14:07
6 her to liaise with Inspector Sheridan. You had the
7 information -- I take it that is you directing her to
8 liaise with Inspector Sheridan?

9 A. That is me asking her to liaise with Inspector
10 Sheridan, yes. 14:07

11 316 Q. She, I take it, informed you that Marisa teaches in
12 Raphoe, or did you tell her that?

13 A. No, no, that is her making me aware of the fact that
14 she is a teacher in Raphoe.

15 317 Q. You also directed her to liaise with the HSE? 14:07
16 A. Yes.

17 318 Q. That was to be an informal liaison?
18 A. That was to be an informal liaison because of the
19 previous liaison that had taken place in relation to
20 Keith Harrison, Marisa Simms and their family, I asked 14:07
21 for an informal follow-up to be done with the HSE in
22 relation to a possible developing situation that may
23 require intervention with the HSE into the future.

24 319 Q. Then "update tomorrow".
25 A. Yes. 14:07

26 CHAIRMAN: There's just one thing that strikes me, if
27 you wouldn't mind me interrupting, Mr. Harty, and this
28 is not a criticism, not to be taken as a criticism. I
29 am just re-reading my notes in relation to Sergeant

1 Brigid McGowan, and indeed she does say, vis-à-vis the
2 end of the anonymous matter, reporting to
3 Superintendent McGovern on the 12th -- 14th March 2012,
4 "and as far as I was concerned, that was the end of me
5 and Keith Harrison", that's how she put it. But she 14:08
6 wasn't asked about any of these things. I mean, it's
7 probably nobody thought whether it's worthwhile asking
8 her, but I don't know whether we should recall her on
9 that, if something is to be made of it. I mean, if it
10 is just something passing by, that is a different 14:08
11 matter.

12 MR. HARTY: Unfortunately, it would strike me that it
13 is rather central. The difficulty I have, and I think
14 perhaps the Tribunal also had similar difficulties, is
15 that the typed notes of Superintendent McGovern's -- 14:08
16 the typed version of Superintendent McGovern's notes
17 were only made available yesterday, and, in the
18 circumstances, I wasn't armed with this information.
19 To be fair to Superintendent McGovern, his quality of
20 his policing is undoubtedly more transparent than the 14:09
21 quality of his handwriting and I certainly can't make
22 head nor tail of his handwriting.

23 CHAIRMAN: No, no, no. And, as I said, it is not a
24 criticism. I mean, it's not like the client alleges
25 such and such so it has to be put to the client. It's 14:09
26 just that it's there and there's a few bits and pieces
27 of it. So it just may be worthwhile recalling Sergeant
28 McGowan in relation to it, because there's about --
29 well, there's about three dates there, 24th September,

1 30th September, 1st October, when she's doing things,
2 and then Sergeant Collins called her about the wedding
3 and the concerns in relation to whether Garda Harrison
4 was going to appear at the wedding, and then we go on
5 from there, and that is why I understand she was asked 14:09
6 to participate in the interview. But I can't make
7 anything of it, unless something is made of it, but if
8 something is to be made of it, I think, in fairness,
9 she ought to be asked about it. It wouldn't take long.
10 And I appreciate your difficulty, there's the notes, we 14:10
11 had the statement of Superintendent McGovern, but it
12 becomes, as I said, and indeed you said, a lot clearer
13 when the notes are typed out. And even then, I mean,
14 he's selecting a bit here, a bit there. And that's the
15 nature of a journal, it's to remind yourself, not to 14:10
16 inform other people.

17 MR. HARTY: No.

18 320 Q. And I think that is the case; I mean, I take it your
19 experience with Sergeant McGowan was that when you gave
20 her directions, that she would abide by those 14:10
21 directions?

22 A. It was a request. Yeah, it was a request to Sergeant
23 McGowan --

24 321 Q. Yes.

25 A. -- to do a follow-up of that particular nature on the 14:10
26 day with the HSE. It wasn't a specific direction, not
27 in that sense of the word, you know.

28 322 Q. Okay.

29 A. Like, I mean, we have terminology in the Garda

1 organisations, directions and there's requests and
2 things to be done, but everything isn't the subject of
3 a specific, you know --

4 323 Q. I understand. A direction is something that is an
5 order, a request is something -- 14:11

6 A. It suggests an immediate response, yes.

7 324 Q. A direction suggests immediate response?

8 A. Yes.

9 325 Q. "And to update tomorrow." And then there's a further
10 conversation with Sergeant McGowan at two minutes to 14:11
11 eight, page 2460, and that's recounting her
12 conversation with Sergeant Durkin?

13 A. Yeah, she would have -- that note that I have made
14 suggests a follow-up that she had done with Sergeant
15 Durkin in relation to the original conversation that 14:11
16 she had with Sergeant Durkin, and it specifically
17 reflects on the actual upcoming wedding and the
18 situation that was represented to us, that may arise
19 from a policing perspective.

20 326 Q. I don't need to go through these following entries in 14:12
21 that they are -- they're relatively uncontroversial and
22 not directly related to your own evidence in relation
23 to it, because we now at least have the time whereby
24 Sergeant Collins has, in fact, spoken to Sergeant
25 McGowan on the 1st October, which is when she says she 14:12
26 first became involved in relation to this matter?

27 A. Yeah, well I suppose that was her first direct formal
28 involvement with Sergeant Collins in relation to the
29 matter. That was again, I had requested that she speak

1 to the people who had the best available information or
2 evidence associated with what we were asked to inquire
3 into.

4 327 Q. And I am to -- just to confirm with you again that on
5 the 3rd October at 5:48 -- sorry, 4:48, it was at 14:12
6 Sergeant McGowan's own request to you that she went to
7 Letterkenny. I take it you would have to release her,
8 strictly speaking, to work in Letterkenny Garda Station
9 on a given day?

10 A. Yeah. At 4:48 on that date Sergeant McGowan would have 14:13
11 contacted me. She represented that Inspector Sheridan
12 and Sergeant Collins had at this stage spoken to Marisa
13 Simms and that she had agreed to come into the Garda
14 station on Sunday to make a statement of complaint in
15 relation to the matter, and she indicated to me that 14:13
16 Inspector Sheridan had asked her to join her and to
17 assist her in the taking of that particular statement
18 of complaint, and I agreed to that particular
19 situation. Yes, she was going to be performing duty
20 outside of the Milford Garda district, so, as a 14:13
21 courtesy to me, she phoned me and sought my permission
22 to do that, and I gave her that, gave her that
23 authorisation or permission.

24 328 Q. I assume, just as a matter of practicality, if she was
25 taking a day off to do it she would be entitled to 14:14
26 another day off in lieu? If she was coming in from her
27 day off, she would be entitled to a day off in lieu, I
28 presume that would be taken out of her ordinary service
29 in Milford, so she would be required to ask you could

1 she work in an alternative station and that would be
2 part of her obligation?

3 A. Yeah, as my notes indicate, she was -- it was a rest
4 Sunday for her, and she was agreeable on the day to
5 change her rest Sunday to facilitate that particular
6 duty. 14:14

7 329 Q. Yes.

8 A. And anyway, like, I mean, it wasn't as if the matters
9 on the day that were the subject of inquiry at this
10 moment in time also reflected on the Milford Garda 14:14
11 district, so it would have been a matter of course that
12 somebody from the Milford Garda district would provide
13 assistance in relation to the actual investigation.
14 And Sergeant McGowan was the best qualified, in my
15 view, and she had been requested by Inspector Sheridan 14:14
16 to do -- or to assist her in that particular duty.

17 330 Q. Although there was a certain difficulty in that she was
18 not a fresh pair of eyes; she related to you the
19 allegations contained in the anonymous letter the
20 previous year, isn't that correct? 14:15

21 A. Yes, she would have been familiar with previous issues
22 in that there. But I hadn't sought a pair of fresh
23 eyes to take the statement in relation to this matter.

24 331 Q. No, you didn't direct it; she requested to be allowed
25 to do it and permitted to do it? 14:15

26 A. That's correct, Mr. Chairman.

27 332 Q. One thing just on the earlier entries there I should
28 have gone to, which is at 9:58pm on 1/10. It's page
29 2460. On the 1/10. Yes. Just Sergeant Collins --

1 that was a phone call to you, was it?

2 A. That was a phone call to me from Sergeant Collins, yes.

3 333 Q. Right. Okay. Sergeant Collins never actually spoke to
4 Marisa Simms. Your note says that he said he did.

5 A. Well, it's my understanding that he -- no -- sorry, 14:16
6 repeat your question, please.

7 334 Q. Your note says "Sergeant Collins update spoke with
8 Marisa Simms".

9 A. Yeah, well, again, that's the note I made of the
10 conversation that I would have had with Sergeant 14:16
11 Collins, so I was of the view that he had spoken to
12 Marisa Simms in relation to the matter.

13 335 Q. I think he had left a voicemail on her phone and I
14 think he had spoken to Marisa Simms' mother?

15 A. I can't -- I can't say. That's just my understanding 14:16
16 of the matter and the note that I made from my
17 conversation with Sergeant Collins.

18 336 Q. Now, you were informed by Sergeant McGowan that a
19 statement had been recorded from Marisa Simms and then
20 you were called to a conference, I take it, commencing 14:16
21 at 10:30am on the 8th October 2013. That's at page
22 2461.

23 A. Yes. The conference was arranged for 10:30am, yes, on
24 the morning of the 8th October 2013. That is the note
25 I have in my diary. As I said earlier, I don't 14:17
26 actually know at what point it was actually arranged, I
27 don't know what time it was actually arranged prior to
28 that, but that was the time that the conference was set
29 for, 10:30, and that's the time the conference

1 commenced at.

2 337 Q. And do you recall how long the conference took?

3 A. Well, I can only go by the notes that I took in
4 relation to the matter, and if the conference started
5 at 10:30am, from the time the conference finished and 14:17
6 my return to Milford Garda Station in the day to
7 commence the section 102 referral, I made the first
8 follow-up phone call at 12:27pm.

9 338 Q. And that follow-up phone call was for the purpose of
10 getting the name of an SIO -- 14:18

11 A. Correct.

12 339 Q. -- to make the section 102?

13 A. Correct. So the return, the return journey from
14 Letterkenny to Milford, somewhere in the region of 35
15 minutes, or 35 or 40 minutes, depending on traffic. 14:18

16 340 Q. I take it it was after that phone call that you had the
17 name of Mr. Wright as the person to make the referral
18 to?

19 A. Yeah. I made -- I made the telephone call at 12:27pm
20 to command and control system in Dublin. They 14:18
21 subsequently made contact with the SIO on call on
22 behalf of the Garda Ombudsman Commission and at 12:42pm
23 Mr. Darren Wright, senior investigating officer, he
24 phoned me back on my mobile, on the number I would have
25 given to the Command and Control office. 14:18

26 341 Q. Okay. Well, can I suggest to you that you must have
27 made those phone calls and received those phone calls
28 in Letterkenny Garda Station?

29 A. I can't, I don't -- I can't answer that question. I'm

1 of the understanding that I made the actual calls from
2 Milford Garda Station, because the documentation that I
3 would have completed or would have had to complete, I
4 would have had it at Milford station. And those
5 documents, the blank documentation that I would have 14:19
6 used to make the referrals, I would have had those
7 documents at Milford Garda Station in my section 102
8 referral folder. That's my only recollection,
9 recollection of how it would have happened.

10 342 Q. The reason I say that is that Inspector Sheridan took 14:19
11 notes, the only notes, and rather scant notes, of that
12 conference, and at the bottom of those notes she
13 recites "Darren Wright, GSOC" on it, and they are
14 the -- she tells us are contemporaneous notes of that
15 meeting. And the only way that the name "Darren 14:19
16 Wright" could have been added at the end of those notes
17 is if the meeting -- if you had made those calls from
18 Letterkenny Garda Station?

19 A. Certainly I would not have made any phone calls to
20 Darren Wright or Command and Control system in the 14:20
21 persons of Inspector Sheridan.

22 343 Q. Well, how did she get the name "Darren Wright"?
23 A. There --

24 344 Q. That's in her contemporaneous notes of the meeting and
25 her testimony is that that was what she did, was that 14:20
26 these three pages -- and they're at page 906, I think,
27 yes, 906 and onwards. And if we go to 908, Darren
28 Wright's name is there?

29 A. Yeah. Maybe so, written on her notes in that there. I

1 certainly don't note any time of the completion of the
2 meeting or the completion of the conference, so, I
3 mean, I can't speak for Inspector Sheridan, she made a
4 note of "Darren Wright, GSOC". She was aware of who I
5 referred the matter to. You will note from my 14:21
6 statement she would have made inquiries for me in
7 relation to the outcome of the actual inquiry or the
8 referral I had done to GSOC. I don't know when
9 Inspector Sheridan made that particular note, and
10 certainly her notes don't suggest a finishing time for 14:21
11 that particular meeting. So maybe somebody else would
12 be able to assist, but I certainly can't assist the
13 Tribunal, Mr. Chairman, in relation to the time the
14 meeting concluded.

15 345 Q. You can assist insofar as you can be satisfied that 14:21
16 Darren Wright's name was not mentioned in that meeting?

17 A. Oh, I can't account for Inspector Sheridan's note.
18 That is where I wish to leave the matter. All I can
19 account for is my contemporaneous notes and the times
20 that I have recorded in relation to my contact with 14:21
21 Command and Control and Mr. Darren Wright, and that is
22 all I can help the Tribunal with, Mr. Chairman. I
23 don't, I don't know why Inspector Sheridan has that
24 particular note or when she made it or what time she
25 made it at. 14:22

26 346 Q. I appreciate that. But as far as you were concerned,
27 you had Mr. Wright's name following your discussion or
28 your communication through Sergeant Keogh -- when that
29 entry there at 12:27pm in your own notes, yet again

1 2461 is the page, is that Sergeant Ray Keogh was
2 contacting Command and Control or is that Sergeant Ray
3 Keogh in Command and Control--

4 A. That is Sergeant Ray Keogh in Command and Control. If
5 you look at that, I'd made the entry in relation to 14:22
6 Mr. Darren Wright at 12:42pm, that is Mr. Darren Wright
7 phoning me back.

8 CHAIRMAN: And is he in Milford, is he? Or is he in
9 Letterkenny? Where is he?

10 A. Mr. Darren Wright is the -- 14:22

11 CHAIRMAN: Oh, I know where he is, but, sorry, who
12 would have rung up? Did you personally ring up?

13 A. Personally, personally, Mr. Chairman.

14 CHAIRMAN: You didn't get somebody else to ring up and
15 say, who should I ring in GSOC? 14:23

16 A. No, you can't do that, Mr. Chairman.

17 CHAIRMAN: You'd never do that?

18 A. No, no. The process is, you must ring Command and
19 Control. They make contact with GSOC. You don't know
20 at that particular time who the actual SIO on behalf of 14:23
21 GSOC is. You wait for the phone call. And it's not
22 until you receive the phone call that you know who is
23 actually on the other end of the line or who is going
24 dealing with the actual matter.

25 347 Q. MR. HARTY: And command and Control, is that in Dublin? 14:23

26 A. Command and Control in Dublin.

27 348 Q. So you spoke to Sergeant Ray Keogh, you told him you
28 had a section 102 referral, he then contacts GSOC and
29 then the senior investigating officer from GSOC will

1 contact you?

2 A. That's correct, Chairman.

3 349 Q. So that's when you know who you're dealing with?

4 A. That's correct, Chairman.

5 350 Q. So from a point of view of contemporaneity, that 14:23
6 couldn't have been known at the meeting at Letterkenny
7 Garda Station, that Darren Wright was going to be the
8 person who was going to contact you?

9 A. All I can say is, Mr. Chairman, it wouldn't have been
10 known until 12:42pm. That's all I can say, 14:23
11 Mr. Chairman.

12 351 Q. Okay. Do you recall that meeting well or are we
13 working from -- did you take your own detailed notes of
14 that?

15 A. No. 14:24

16 352 Q. I accept there's very limited notes in your journal.

17 A. No. What -- the notes I have in my journal would
18 appear to reflect on what notes I took at the actual
19 meeting. I don't have any other notes in relation to
20 the actual meeting. 14:24

21 353 Q. It was quite a serious meeting, wasn't it?

22 A. Well, there were -- it was about a serious matter.

23 354 Q. Yes. And various serious matters were discussed in
24 relation to outside agencies, GSOC and the HSE. And
25 also, as you have given in your own evidence, 14:24
26 potentially very criminal serious matters were being
27 discussed between five members of the force. Would it
28 not have merited somebody taking detailed notes and
29 minutes?

1 A. I can't answer that question, Mr. Chairman. I wouldn't
2 have had any responsibility, as an attendee at the
3 meeting, to take comprehensive notes in relation to the
4 matter. I took notes in my journal of what I needed to
5 do or what was reflected on my responsibilities in 14:25
6 accordance with what our journal references are about
7 and I didn't make notes of what jobs were assigned to
8 other people at that particular meeting.

9 355 Q. No. But I take it that in your experience whereby
10 there would be a meeting of this nature, there would 14:25
11 ordinarily be a notetaker. This is a formal meeting
12 which had been convened to deal with references to
13 GSOC, the HSE and a criminal investigation involving a
14 chief superintendent, two superintendents, an
15 inspector, a detective inspector, and a garda, you 14:25
16 would expect, would you not, that somebody there would
17 be appointed official notetaker?

18 A. There would quite often be a notetaker at meetings that
19 were previously convened by Chief Superintendent
20 McGinn, but it would not necessarily mean that there 14:26
21 would always be a notetaker at meetings that were
22 convened by the chief superintendent.

23 CHAIRMAN: Mr. Harty, forgive me for intervening, but
24 in a previous section of the Tribunal we did indeed
25 have a notetaker, and as to whether that illuminated 14:26
26 anything is a matter that very much is up in the air.
27 Indeed, some people refer to the place where it took
28 place as the conspiracy room. So, I mean, maybe we're
29 better off without it. But in any event, is there

1 anything sinister about not having a notetaker?
2 A. There certainly wasn't, Mr. Chairman, in relation to
3 this meeting. It wasn't convened for any purpose other
4 than to discuss the extent of the statement of
5 complaint that had been made by Marisa Simms and Rita 14:26
6 McDermott and what proposed actions were required in
7 relation to the allegation that were contained in those
8 statements.
9 356 Q. MR. HARTY: You described it as an open and frank
10 discussion, that she said it was a discussion on the 14:27
11 statement of complaint, you explained the reason why
12 everyone was there, and, in relation to that, the
13 reason why everyone was there, Chief Superintendent
14 McGinn is obviously the person running the division;
15 Superintendent Finan, remind me again, his purpose was? 14:27
16 A. He was Garda Harrison's district officer.
17 357 Q. District officer. You were there in that the residence
18 as such was within your district?
19 A. Yes, and quite a number of the allegations that were
20 contained within the actual statement as presented were 14:27
21 alleged to have occurred within my administrative
22 district.
23 358 Q. Yes. Inspector Sheridan was obviously the person who
24 had been appointed by the superintendent to -- chief
25 superintendent, I should say, to investigate this 14:28
26 matter, to review the matter initially and then to
27 investigate it, and get the statement, Inspector
28 O'Donnell was there for the death threats and you were
29 there discussing a GSOC referral, a HSE referral and a

1 criminal investigation. So my question is: What was
2 Garda Campbell doing there? Because he was internal
3 affairs and dealing with, I take it, disciplinary
4 matters but there was no discussion of disciplinary
5 matters on the day. 14:28

6 A. Garda Campbell was there at the request of Chief
7 Superintendent McGinn, who he's based in her office.
8 CHAIRMAN: As I understood it, and I may have got this
9 wrong, he's effectively her secretary.

10 A. Well -- 14:29

11 CHAIRMAN: No?
12 A. -- he's not her --
13 CHAIRMAN: I don't mean as in, you know, very good
14 typist or anything like that.

15 A. No, no. 14:29

16 CHAIRMAN: I just thought that he was in charge of a
17 particular area of her work to make sure that it was
18 done.

19 A. That would be correct, Mr. Chairman. He actually is in
20 charge of issues in the chief superintendent's office 14:29
21 in relation to disciplinary investigations, liaising
22 with the Garda Síochána Ombudsman Commission and that
23 particular type of aspect of the divisional office
24 management.

25 359 Q. MR. HARTY: I'm going to take you, I think, at this 14:29
26 stage through Inspector Sheridan's notes again. So
27 it's page 906. Thank you. "Activity reports on
28 Pulse." So there was some discussion as to doing
29 activity reports in respect of Marisa, Paula and Rita,

1 is that correct?

2 CHAIRMAN: Again, I'm not sure they necessarily follow
3 one from the other. I just don't know. Again this is
4 like reading runes or tea leaves. It's not any
5 disrespect to anybody, but you make notes in order to 14:30
6 remember what you're thinking of and not to inform
7 other people.

8 MR. HARTY: Okay, I can move on from that in any event.

9 CHAIRMAN: I mean, there certainly seems to be three
10 names; Marisa, Paula and Rita Bogle. 14:30

11 MR. HARTY: Yes.

12 CHAIRMAN: Which is the married name, is it?

13 MR. HARTY: No. It is the maiden name of
14 Mrs. McDermott.

15 CHAIRMAN: Yes. Anyway, there it is. 14:30

16 360 Q. MR. HARTY: what certainly appears to have been
17 discussed was how to progress the criminal
18 investigation, isn't that correct?

19 A. The course of investigation was discussed.

20 361 Q. well, it was discussed that certain people would be 14:31
21 interviewed in relation to it, isn't that correct?

22 A. If I can explain, Mr. Chairman. Even though a decision
23 was going to be made in relation to the referral of
24 this matter under section 102 of the Garda Síochána Act
25 2005, there would have remained a responsibility on An 14:31
26 Garda Síochána and Chief Superintendent McGinn in
27 accordance with section 89 of that particular Act to
28 ensure on the day that evidence that may well be
29 relevant to the investigation of this matter, if taken

1 on board by GSOC, was secured and preserved in relation
2 to the investigations.

3 362 Q. Are you seriously telling this Tribunal that there was
4 no discussion at that meeting of continuing
5 investigation of criminal acts by An Garda Síochána at 14:32
6 that stage?

7 A. I think the answer I have previously given is the
8 answer to that is: Yes, there was. There were matters
9 discussed of an urgent nature that required to be
10 addressed in the interim pending the evaluation of the 14:32
11 matter on the day by GSOC.

12 363 Q. Section 105 of the Garda Act was raised, wasn't it?
13 A. I was here when section 105 of the Garda Síochána Act
14 was raised. As far as I'm concerned, section 105 of
15 the Garda Síochána Act, as far as I recall, was never 14:32
16 discussed and it's not relevant. If you read section
17 105 of the Garda Síochána Act it is actually not
18 relevant to this particular --

19 364 Q. Why do you say it is not relevant?
20 A. Because -- maybe, I'm sorry, Chairman, if somebody 14:32
21 would put it up. It relates on the day to charging
22 persons on the day in relation to --

23 365 Q. Well, you can only charge people if you have
24 investigated it, isn't that correct?
25 A. That's what I am saying. 14:32

26 366 Q. Or, that is the standard practice, I take it, in
27 Donegal?
28 A. Yeah, and also you require the authority of the
29 Director of Public Prosecutions. It didn't -- that's

1 what I am saying, I'd appreciate it maybe if section
2 105 was opened up. It's not relevant or would not have
3 been relevant to the discussion that the chief
4 superintendent and ourselves were having at that
5 particular meeting. That's simply my view, 14:33
6 Mr. Chairman, in relation to it.

7 367 Q. If I go to page, the next page, 907 and if we go down
8 to the second half of that page: "Section 105, Garda
9 continue and GSOC." I mean, there is no question but
10 that that was discussed at that meeting. That is 14:33
11 Inspector Sheridan's -- her sworn testimony was that
12 these were her notes from that meeting.

13 A. That --

14 368 Q. And are you telling me that no one discussed section
15 105 at that meeting? 14:33

16 A. I'm not saying that nobody discussed section 105. I'm
17 saying that I don't recall section 105 of the Garda
18 Síochána Act being discussed at that meeting and I
19 certainly on the day can't understand why it would have
20 been, because it wasn't, it wasn't relevant to the 14:34
21 actual inquiries that we were undertaking at that
22 particular time.

23 369 Q. Okay. This is in circumstances whereby it's perfectly
24 clear from the earlier page that interviews are to be
25 carried out by Brigid McGowan, Paula who is on 14:34
26 honeymoon and Andrew is also to be interviewed, a phone
27 is to be dumped, there are phone checks to be made in
28 respect of the death threats, all of that was discussed
29 and actual positive action to be taken by various

1 different people. Are you saying there was no positive
2 action to be taken by people, that the matter was to go
3 to GSOC and GSOC would deal with the matter?

4 A. No. What I have said, Mr. Chairman, there was positive
5 actions to be taken and those actions on the day were 14:34
6 addressed at that particular meeting, and they were
7 done for the purposes of preserving evidence or
8 securing evidence in the event of GSOC taking on board
9 this particular investigation in accordance with
10 section 89 of the Act. 14:35

11 CHAIRMAN: Right. Mr. Harty, I'm just trying to
12 understand why let's say, if that is 105 -- "95/05", I
13 don't know if that is what it is, or "95105", if it is
14 105 is there something to be read into that?

15 MR. HARTY: Yes. If you look at the next entry it 14:35
16 says: "Section 105, Gardaí can continue and GSOC."
17 CHAIRMAN: Yes, no, that is indeed what section 105
18 says. "Nothing in this Act --"

19 MR. HARTY: And the note reflects it.

20 CHAIRMAN: Look, "Nothing in this Act shall preclude a 14:35
21 member of the Garda from charging another member with
22 an offence even though the conduct which the offence
23 relates could be the subject matter of a complaint for
24 investigation under the Act. However, if the complaint
25 is made concerning a Garda he can't or she can't be 14:35
26 charged without the DPP's consent."

27 MR. HARTY: DPP's consent, yeah. So, effectively what
28 it says is that there's nothing in the GSOC, in the
29 Garda Act, the GSOC provisions, to prevent a Garda

1 investigation and the only difference being that it
2 isn't something whereby a Garda may charge -- or a
3 prosecuting member may prosecute of their own volition,
4 it must go through the DPP.

5 CHAIRMAN: Again I'm wondering, what could I read into 14:36
6 that?

7 MR. HARTY: Well, the situation is --

8 CHAIRMAN: There isn't a subsection (5) -- there is a
9 subsection (5) to 95.

10 MR. HARTY: No, I think the first letter, it appears to 14:36
11 be crossed out and it appears to be section 105, in
12 other words the first letter which looks like a cross
13 between a C and a G, from reading those notes. But it
14 is section 105. And Inspector Sheridan accepted that
15 that referred to GSOC, the Garda Act. 14:36

16 CHAIRMAN: It could. It could, insofar as she
17 remembers. 95(5) on the other hand says:

18
19 "An investigation of a matter under this section
20 doesn't preclude a subsequent investigation under 14:36
21 section 98."
22

23 MR. HARTY: Yes, that's to do with, section 95 is in
24 relation to matters which are disciplinary matters
25 only, not criminal, but if during the course of a 14:37
26 disciplinary-only investigation criminal matters come
27 to light, it can then be transferred into a section 98
28 investigation, which can then result in a criminal
29 prosecution.

1 CHAIRMAN: Yes. Well anyway, it seems to me the Act is
2 read as, you can refer something to GSOC but an
3 investigation of a criminal kind can still continue.
4 Like, if a garda murders somebody, for instance, well
5 then there has to be a reference to GSOC, but also the 14:37
6 Gardaí don't have to stop investigating -- in fact, I
7 think they'd be duty bound to continue. And you would
8 be duty bound to continue also for the purpose of
9 gathering everything relevant to that which --

10 A. Yeah. And as I said, Chairman, in accordance with 14:37
11 section 89 of the Act there is a responsibility on us
12 to ensure on the day that evidence that can be secured
13 or retained on the day is not -- that that is actually
14 done for the purposes of preservation into the future
15 if GSOC require that particular information into the 14:37
16 future.

17 370 Q. MR. HARTY: well, I think that's --

18 A. And I suppose a prime example of it here, and is
19 mentioned in them particular notes of Inspector
20 Sheridan, which did take place and as transpires on the 14:38
21 day were extremely significant in relation to the
22 overall investigation of the matter, was the dumping of
23 the phone.

24 371 Q. We'll come back to the overall investigation of the
25 matter, superintendent. The situation is that various 14:38
26 people -- sorry, Sergeant McGowan was given jobs to do,
27 to interview Emma Roulston and Andrew Simms, I take it
28 that was. She was also given the job of the HSE
29 referral. Now you obviously would have had to

1 communicate those matters to her because she wasn't at
2 this meeting, isn't that correct?

3 A. No. Sergeant McGowan wasn't in attendance at the
4 meeting.

5 372 Q. And we'll come back to whether or not she did those 14:38
6 jobs, but I have to -- I think your evidence is that
7 this was the only occasion where you had made a section
8 102 referral where it had been queried, isn't that
9 correct?

10 A. That would be correct, Mr. Chairman. 14:39

11 373 Q. Can I take it that in every other section 102 referral
12 there was something amounting to serious harm or death
13 arising?

14 A. No, Mr. Chairman.

15 374 Q. Really? What other section 102 referrals did you 14:39
16 make -- I don't need to know names, but can you give me
17 a specific of a section 102 referral that didn't
18 involve serious harm or death?

19 A. I have made a number of section 102 referrals in
20 relation to the involvement of Garda members on active 14:39
21 duty on the day where they were involved in particular
22 incidents where serious harm or the consequence of
23 would be death were not part of the actual referral.

24 375 Q. On what basis could you possibly have thought you can
25 do that, Superintendent McGovern? 14:39

26 A. That situation would have been encouraged by GSOC from
27 our earliest intervention or training on the day with
28 GSOC, matters of those particular nature were in the
29 earlier stages of our involvement on the day with GSOC,

1 all those incidents involving situations where patrol
2 cars were involved in chase situations, a crash would
3 occur, an injury would have occurred to some other
4 party in that vehicle, we always referred those
5 particular situations. We don't necessarily always 14:40
6 refer them any more.

7 376 Q. Okay. But you do appreciate that if there is a car
8 crash the actions may have resulted -- and that's the
9 test, it's "may have caused death or serious harm", and
10 the answer is a car crash may have caused serious harm, 14:40
11 obviously I'm assuming it didn't cause death in those
12 instances, but it may have caused serious harm, isn't
13 that correct?

14 A. That would be correct. But also on the day where
15 there's a catalogue of ongoing related domestic fines, 14:40
16 related incidents, serious harm on the day to the
17 actual -- psychological and emotional -- serious harm
18 by way of psychological and emotional trauma to the
19 actual victim in those particular cases is also a
20 determination. 14:41

21 377 Q. And have you referred other cases like that?

22 A. I have never been involved in another type case where a
23 garda member was involved in such a situation.

24 378 Q. Right. And can you tell me, because I take it you are
25 aware of the provisions of, I think it is, section 85 14:41
26 of the Garda Act as to the definition of serious
27 harm -- sorry 82, excuse me.

28 A. Yes, I am, Chairman.

29 379 Q. And serious harm means "injury that creates a

1 substantial risk of death, causes serious disfigurement
2 or causes substantial loss, impairment and mobility of
3 the body as a whole or function of any particular
4 bodily member or organ"; which particular bodily member
5 or organ did you think had been impaired in Marisa
6 Simms? 14:41

7 A. Harm also is defined as -- it's also harm of the mind.

8 380 Q. No. Harm is defined in the Act for: "The purposes of
9 this section -- " for the purpose of this part, in this
10 part "-- unless the context otherwise requires --" and 14:42
11 then it gives that definition. So harm does not
12 include distress or upset or feeling harassed. It
13 simply does not.

14 A. Judge, I formed the view and there's a reason why I
15 made the section 102 referral, that I had serious 14:42
16 concerns on the day in relation to the actual
17 definition of serious harm in relation to the overall
18 wellbeing of Marisa Simms in relation to this catalogue
19 of ongoing threats, intimidation and criminal related
20 allegations. 14:42

21 381 Q. And you formed that view independently of four other
22 people in the room?

23 A. No, it was the subject of a discussion at that
24 particular meeting, yes.

25 382 Q. And some emphasis was put on the word may, wasn't it? 14:42

26 A. Well, it's a may situation in relation to the referral
27 of the matter. But, as I explained, Mr. Chairman, if I
28 decided after discussion or it was decided after
29 discussion in relation to whether it should or

1 shouldn't qualify as a section 102 referral, then there
2 was also an obligation to complete the appropriate
3 section of the referral documentation in relation to
4 the rationale for not making the referral in the first
5 place. And I've always had -- I've a very good working 14:43
6 relationship with the Garda Síochána Ombudsman
7 Commission and I have always been advised that it is
8 easier to refer and let them make a decision whether in
9 fact it qualifies or not. It's a situation, they take
10 the referral, they evaluate it and they make a decision 14:43
11 and they pass on the decision to us.

12 383 Q. Within ten minutes of this referral being made it's
13 already being queried by Chief Superintendent
14 McLoughlin in Internal Affairs, isn't that correct?

15 A. Certainly the timeframe I'm not a hundred percent sure 14:43
16 about, Mr. Chairman. Yes, I'm aware that the matter on
17 the day was the subject of a query within a very short
18 space of time of the referral having been made and I
19 certainly am not in a position to explain to the
20 Tribunal why that situation occurred on this occasion. 14:43

21 CHAIRMAN: Mr. Harty, where does the --

22 MR. HARTY: Sorry, it is 20 minutes, I was unfair in
23 that --

24 CHAIRMAN: Sorry, Mr. Harty --

25 MR. HARTY: -- but it is 1622. 14:44

26 CHAIRMAN: No, no, fine. Where does the word "may"
27 occur?

28 MR. HARTY: May occurs in page 2 of Inspector
29 Sheridan's notes under section 102. It's a reliance on

1 the word "may" in section 102, whereby the actions of
2 An Garda Síochána may have caused death or serious
3 harm, it says in section 102.

4 CHAIRMAN: All right. May have caused serious -- Yes,
5 in other words, where it is not certain but serious 14:44
6 harm itself is "injury that creates substantial risk of
7 death, serious disfigurement or substantial loss or
8 impairment or mobility of the body as a whole or the
9 function of any particular organ, bodily member or
10 organ", that could be a kidney for instance. 14:44

11 MR. HARTY: Yes.

12 CHAIRMAN: Yeah. All right. Okay. But you
13 appreciate, chief superintendent, that the whole point
14 of this is that at this particular meeting you decided
15 to throw the book effectively at Garda Harrison, that 14:45
16 is the point of these questions, am I right in thinking
17 that? So that is the point you are dealing with. And
18 that, you had no bona fide belief in what you did and
19 that it is a contrivance. That is effectively what
20 counsel is putting to you. I'm not saying that. I'm 14:45
21 just trying to summarise what is being put to you.

22 A. I understand the question, Mr. Chairman, and the answer
23 to that is: No, it was never motivated in any way to
24 get at Garda Harrison. I think the issue here, it
25 needed a significant and urgent focus by the 14:45
26 independent investigative authority, being GSOC, in
27 relation to the actual catalogue of allegations that
28 were contained in the statement and the consequences.
29 As I said, from my experience of domestic violence and

1 the actual statement that was made here, training for
2 us would suggest on the day that where somebody is in a
3 position to make a statement of that particular nature
4 there have been at least 25 other related incidents on
5 the day having occurred before they were even in the 14:45
6 day -- or get the strength to come in and make a
7 complaint in relation to the matter. I had serious
8 concerns for the psychological wellbeing of Marisa
9 Simms in relation to --

10 384 Q. MR. HARTY: Did you have serious concerns for the 14:46
11 ongoing safety of Marisa Simms?

12 A. There would have been a safety concern in relation to
13 Marisa Simms in relation to the matter, yes. But at
14 that particular time she was not resident at that
15 particular address. She had now left the actual 14:46
16 residence. She was now living at an address
17 [inaudible] in Annagry, which was a considerable
18 geographical distance away from the actual address at
19 which the incidents that were alleged in this
20 particular statement had occurred. 14:46

21 385 Q. Domestic violence doesn't tend to be location specific.
22 It tends to be wherever the victim is, is where
23 domestic violence takes place, isn't that correct?
24 It's not a geographically limited thing?

25 A. No, a domestic violence incident can occur at any 14:46
26 location.

27 386 Q. And anywhere?

28 A. Yes. And at any location.

29 387 Q. Yes. Now you see Inspector Sheridan's notes are very

1 clear. She notes that you discussed section --
2 CHAIRMAN: Well --
3 MR. HARTY: They're very clear in relation to certain
4 things.
5 CHAIRMAN: Well, that's the one thing they're not. I 14:47
6 mean, it's not her job to take notes.
7 MR. HARTY: No.
8 CHAIRMAN: But I mean, you want to put a question,
9 Mr. Harty, it's fine, but it's really, really, really
10 not clear. 14:47
11 388 Q. MR. HARTY: Inspector Sheridan noted that section 85 of
12 the Garda Act was discussed, section 102 of the Garda
13 Act was discussed and section 105 of the Garda Act was
14 discussed. All three sections were discussed. Section
15 85 is where a person having made a complaint, wanting a 14:47
16 complaint to be made to GSOC files it through a Garda
17 station, there's a procedure that has to be followed, I
18 take it you're aware of that procedure, the steps a
19 Garda station should carry out if a person wishes to
20 make a complaint to GSOC? 14:48
21 A. Yeah. That's quite a slightly different situation than
22 a referral in accordance with section 85.
23 389 Q. No, it isn't. A referral in accordance to section 85
24 is where a person has made the complaint under section
25 83 in a Garda station? 14:48
26 CHAIRMAN: No --
27 A. No.
28 CHAIRMAN: -- it's not necessarily that, Mr. Harty. As
29 I understand it, and indeed we have all been following

1 the Act, somebody else can make a complaint, such as,
2 for instance, a mother, a sister, a daughter, and then
3 when that is done it's up to GSOC to contact the person
4 and say, look, do you want to continue with this.

5 MR. HARTY: No, no, that is incorrect, sir. The answer 14:48
6 is, that a complaint can only be made by a third party
7 in very limited circumstances, and I will read that
8 section to you.

9
10 "By a member of the public who is directly affected by 14:48
11 or who witnesses the conduct or, on behalf of the
12 member of the public, by any person, if that member of
13 the public on whose behalf it is being made consents in
14 writing or orally to it being made, or is because of
15 age or mental and physical condition, incapable of 14:49
16 giving consent."

17
18 That is section 83.

19 CHAIRMAN: Okay, and I understand, Mr. Harty. But I
20 read that as saying that if a complaint is actually 14:49
21 made and then GSOC ring up the person, they say yes, I
22 want that complaint to go ahead, then it goes ahead. I
23 mean, no drafting of any Act is perfect. I may be
24 getting it wrong.

25 MR. HARTY: No, no, I would have to say to the Tribunal 14:49
26 that in relation to that, the procedures are very clear
27 in relation to it. What GSOC do when they receive a
28 complaint that they are not quite sure where to put it,
29 is that they contact the alleged complainant. But that

1 is their internal procedure to make sure they're not
2 missing anybody.

3 CHAIRMAN: No, no, that is true. And that is indeed
4 what they did here.

5 MR. HARTY: But in terms of the provisions under the 14:49
6 Act, section 85 is very precise as to what has to be
7 done.

8 CHAIRMAN: All right. Well, you might like to put a
9 question to the chief superintendent.

10 MR. HARTY: Yes. 14:49

11 CHAIRMAN: And I think it is all directed to whether or
12 not this was a meeting where they decided to throw the
13 books at one person.

14 MS. LEADER: I didn't want to interrupt Mr. Harty but
15 we've just circulated Chief Superintendent McGinn's 14:50
16 notes in relation to the meeting, and he may require
17 time.

18 MR. HARTY: I will give five minutes to look at these. I
19 think in fairness to Superintendent McGovern.

20 CHAIRMAN: Can I have a look? 14:50

21 MS. LEADER: Yes, I think Ms. McGowan might have them.

22 CHAIRMAN: Well now, we can take five minutes and we
23 will see if we are any more illuminated.

24

25 THE HEARING ADJOURNED BRIEFLY AND THEN RESUMED 14:50

26 AS FOLLOWS:

27 MR. HARTY: Sir, I am concerned that I have received a
28 document which Mr. McGuinness I think first had sight
29 of 20 minutes ago, and quite properly handed it to me

1 or had it handed to me immediately. It appears to be a
2 contemporaneous note by Chief Superintendent McGinn of
3 the meeting which took place on the 8th October. It
4 includes a reference to discussions had with an
5 assistant commissioner which is something about which I 15:03
6 knew nothing. My client was asked in the witness-box
7 what basis did he have for the conspiracy theory that
8 this went outside Donegal. I am very concerned on the
9 basis of seeing this document that there are other
10 documents that the Tribunal has not seen or that I have 15:03
11 not seen which are directly relevant to the questions
12 that I am asking this witness, in circumstances whereby
13 this document makes clear to me that anybody seeing
14 this document would have known that it was directly
15 relevant, in that it relates expressly to the meeting 15:03
16 of the 8th October.

17 CHAIRMAN: All right. Mr. Harty, I hear exactly what
18 you say and I know what you are saying. And look, the
19 Tribunal is doing its very best to get in things that
20 are relevant. I also think the Gardaí are doing their 15:04
21 very best to cooperate, that has been my experience all
22 the way through. There's some things that could have
23 been done better, could have been done quicker, but in
24 relation to every single case that goes on, whether
25 it's criminal or civil there's always something that 15:04
26 comes up in the middle of it that needs to be passed
27 over to the other side, and the issue is: Look, is it
28 done in good faith or is it not done in good faith?
29 You are perfectly entitled to reserve a question as to

1 whether this was kept back to Chief Superintendent
2 McGinn, but I am not sure that it in fact is the famous
3 silver bullet that is being looked for. Certainly
4 there is a reference to Assistant Commissioner Kenny,
5 but for all I know that is some kind of an internal 15:04
6 note in relation to this and as to whether he was
7 contacted or not. I know there was a reference in this
8 witness's evidence to him having been contacted, that
9 doesn't necessarily mean there is a giant conspiracy
10 afoot. But I am very willing to listen to everything. 15:05
11 I think what we should do now for the moment is, we
12 should just go on and listen to it and hear your
13 questions and hear what the answers are. You seem to
14 be focusing on the issue as to whether or not this was
15 overkill, and if it is overkill, then can an inference 15:05
16 be drawn from that.

17 MR. HARTY: And my difficulty, sir, in relation to it
18 is that my client -- this isn't a document which is
19 somehow marginal in relation to what went on. This is
20 Chief Superintendent McGinn's own notes as to a meeting 15:05
21 which took place on the 8th October, which is precisely
22 the meeting which directed contact being made with the
23 HSE. So in terms of module N, there is no possibility
24 that anybody could have believed that this document was
25 irrelevant. And what my difficulty with that is, is 15:05
26 that if I am receiving this now, what other documents
27 am I not seeing that are directly relevant to this
28 issue?

29 CHAIRMAN: Right. Well, I am going to ask the Garda

1 team in relation to that. What is the situation there
2 please?

3 MR. HARTY: I think it's Chief Superintendent McGinn's
4 representatives --

5 CHAIRMAN: No, no, it's not. But I mean, the Garda 15:06
6 team is in overall charge of discovery in relation
7 documents and things. Now, I am not making a fuss
8 about this, do you understand that? I mean, if this is
9 the golden bullet, you know, let's destroy Keith
10 Harrison, it doesn't actually say that. It is a series 15:06
11 of notes of a disparate kind. But still and all, I
12 mean, you know, we have had correspondence in relation
13 to things, you appreciate that, we have had
14 discussions, not you and me, but there has been such,
15 and I am just wondering in relation to this, is it the 15:06
16 case that it was overlooked or what is the story?
17 Because very often in this country judges make far too
18 much about mistakes in discovery, and I don't want to
19 do that.

20 MR. DIGNAM: I appreciate that, Chairman, and I 15:07
21 appreciate that the Tribunal isn't making a big fuss of
22 this at this stage. Chairman, we are making inquiries
23 in relation to it. As you will appreciate, Chief
24 Superintendent McGinn is separately represented, so
25 from the point of view of when this was first disclosed 15:07
26 or provided to the Tribunal, if indeed it was provided
27 at an earlier stage at all, is something that we are
28 looking into since it's been raised a number of minutes
29 ago. And perhaps I could reserve my position in

1 relation to that until I have made those inquiries and
2 can assist the Tribunal in a more substantive manner,
3 Chairman. But certainly all efforts have been made to
4 provide everything of relevance to the Tribunal. And
5 as I say, I just want to tie down exactly when this was 15:07
6 disclosed, if indeed it was disclosed by the Garda team
7 or by Chief Superintendent McGinn's team.
8 CHAIRMAN: Mr. Ó Braonáin, are you in a position to
9 tell us anything?
10 MR. POWER: Thank you, Chairman. Conor Power. 15:08
11 CHAIRMAN: Sorry, Mr. Power, I beg your pardon.
12 MR. POWER: Not at all. I have been an absentee, my
13 apologies, Chairman. Schedule 5, volume 1 in June of
14 this year, that is when Chief Superintendent McGinn
15 provided this document to the Tribunal. And the 15:08
16 document is a diary entry.
17 CHAIRMAN: Oh, it is. Did we have it since June?
18 MR. POWER: My understanding is it was provided in
19 June.
20 CHAIRMAN: Did we? 15:08
21 MS. LEADER: Yes. Mr. McGuinness is just checking the
22 position.
23 CHAIRMAN: Oh, he is just checking. Right. It has to
24 be appreciated as well, Mr. Harty, literally we have
25 got thousands and thousands of documents, you know. 15:08
26 And sometimes we don't appreciate things either. So it
27 could well be our fault, I don't know.
28 MR. HARTY: The difficulty with that, and I have said
29 this before --

1 CHAIRMAN: I know, but I don't think there is any point
2 in actually feeding, you know, a great sense of
3 conspiracy. It is not going to help anybody. It's not
4 going to help your client, for instance. It really
5 doesn't help me either. We are looking into this, 15:09
6 there may be a perfectly innocent explanation. I tend
7 to go for the chaos theory before I go for the
8 conspiracy theory and that is the right way to approach
9 things, Mr. Harty.

10 MR. HARTY: Sorry, sir, I wasn't going to accuse 15:09
11 anybody of a conspiracy. What I am concerned about in
12 relation to this matter, whereby we are investigating a
13 module and facts that were set out by the Oireachtas,
14 is that if there is relevant material in the possession
15 of the Tribunal, I fully accept the Tribunal might have 15:09
16 missed its relevance, it is not suggesting that anybody
17 has decided anything, but I have made this point before
18 in relation to documentation; that where there is
19 documentation there that I could see and determine its
20 relevance there is undoubtedly the case, and this is a 15:09
21 very clear example of a document, which is directly
22 relevant, which it appears on the basis of Mr. Power's
23 instructions to have been in the possession of the
24 Tribunal for a number of months and it is directly
25 relevant. It makes, for example, it clear that 15:10
26 Assistant Commissioner Kenny should have given a
27 statement to this Tribunal. It makes it abundantly
28 clear.

29 CHAIRMAN: Mr. Harty, you can actually sit there and

1 you can make a huge deal about this, but, you know, is
2 it a huge deal? I mean, seriously is it a huge deal?

3 MR. HARTY: Absolutely it is. It is a situation
4 whereby --

5 CHAIRMAN: You think it's a huge deal? 15:10

6 MR. HARTY: Absolutely, a situation whereby for the
7 first time I learn today -- the mention of Assistant
8 Commissioner Kenny at all times in this Tribunal, and
9 all reference to him, dealt with affairs which took
10 place in November and December in relation to the 15:10
11 appointment of an investigating officer under the Garda
12 Disciplinary Regulations 2007. This is the first time
13 anybody has been told that Assistant Commissioner Kenny
14 was directly involved in the decision-making process on
15 8th October 2013. It makes it -- 15:10

16 CHAIRMAN: No, doesn't make it clear, Mr. Harty. I
17 mean, you are making a submission, you are making much
18 of things. I presume if there was going to be a
19 discipline investigation that he'd have to be the one
20 to start it, I actually don't know. But I mean, you 15:11
21 know, why go around -- why go around and around in
22 relation to this? why don't we just get on with it?
23 We have the document now, and I can't see that any harm
24 has been done. If you want to make something of it
25 then please do, I am here to listen. But I am not here 15:11
26 to listen to complaints or I am not here to be told
27 that the Tribunal is involved in some kind of a
28 concealment exercise, because we are not. We are
29 literally coming down with documents.

1 MR. HARTY: I don't believe the Tribunal is involved in
2 any concealment exercise, and that would never be my
3 suggestion in relation to it and I have no reason to
4 believe that. I do, however, believe that there is
5 documentation, and just found another example of a 15:11
6 document which is directly relevant which I only see
7 now.
8 CHAIRMAN: Well, let's see what you make of it then.
9 Come on, let's get going.
10 MR. HARTY: What I make of it right now is that I am 15:12
11 applying to the Tribunal to call Assistant Commissioner
12 Kenny to give evidence in relation to the matter.
13 CHAIRMAN: Okay. Right. We have heard you. So, can
14 we go on?
15 MR. HARTY: I am asked by my solicitor if I could have 15:12
16 another two minutes to take instructions in relation to
17 the matter.
18 CHAIRMAN: I want to go on now, Mr. Harty, please.
19 MR. HARTY: Well, I am afraid I have to take
20 instructions from my client in relation to the matter, 15:12
21 I am sorry about that.
22 CHAIRMAN: He is sitting directly behind you.
23 Instructions in relation to what?
24 MR. HARTY: Instructions in relation to what steps I am
25 to take in relation to the matter, in circumstances 15:12
26 whereby a document relating to the central core meeting
27 of this module has landed on my desk in the middle of a
28 cross-examination of somebody relating to that meeting.
29 CHAIRMAN: Well, I tend to wonder at the amount of heat

1 and emotion being generated in relation to this,
2 Mr. Harty, and I am not happy about it.

3 MR. HARTY: Sorry, sir, in relation to heat and
4 emotion --

5 CHAIRMAN: No, Mr. Harty, I really am not happy about 15:13
6 it. I mean, I think it's the duty of counsel to pursue
7 matters in accordance with what he regards as being
8 important to the case --

9 MR. HARTY: I do have to take instructions --

10 CHAIRMAN: -- not necessarily to take instructions in 15:13
11 relation to what counsel is to do on a matter. I mean,
12 if one actually reads out the document, it seems to say
13 "duty" something, "meeting in relation to Keith
14 Harrison/Marisa Simms and receipt of threatening
15 telephone calls. Superintendent Finan, McGovern, 15:13
16 Inspector Sheridan, D/Garda Pat O'Donnell. Spoke to
17 Superintendent O'Loughlin re", it seems to say "phone
18 call and", or it could say something else, "AC Kenny.
19 Section 5(2)(3) Criminal Damage, section 10", that is
20 presumably Offences Against the Person Act, 15:14
21 "psychological". That may say "twenty calls", is it?

22 MR. HARTY: Threatening calls.

23 CHAIRMAN: "Threatening calls to Garda Keith Harrison."
24 That is it. It's not a silver bullet.

25 MR. HARTY: The difficulty is, is that I say that it is 15:14
26 a very relevant piece of information.

27 CHAIRMAN: No, you seriously need to think before
28 actually accusing people of things, you know.

29 MR. HARTY: I am not accusing anybody of anything, sir.

1 CHAIRMAN: No, but before you start saying that --
2 MR. HARTY: Is the Tribunal saying to me that this
3 document isn't relevant?
4 CHAIRMAN: No, I am not saying that at all.
5 MR. HARTY: Well then, I am saying that there is a 15:14
6 relevant document which I have just received which I
7 ought to have seen before now in order to deal the
8 matter.
9 CHAIRMAN: No, but I have that point, Mr. Harty.
10 MR. HARTY: And my client was accused and asked, in 15:14
11 fact by the Chair of the Tribunal, how he came to the
12 conclusion that there were people outside the Donegal
13 division who were running this conspiracy about him.
14 This is directly relevant to a question that the Chair
15 of this Tribunal put in incredulous terms to my client 15:15
16 in the witness-box.
17 CHAIRMAN: Mr. Harty, I am now under attack.
18 MR. HARTY: No, sir.
19 CHAIRMAN: No, I am under attack and I don't like it.
20 I don't think it's fair to impugn the integrity of the 15:15
21 person whose job it is to actually find the truth in
22 relation to this matter. Now, I think what we ought to
23 do is, I think you are right, we ought to adjourn for a
24 number of minutes so that calm perhaps will return.
25 You can take whatever instructions in that time from 15:15
26 your client that you wish. All right, it is now
27 quarter past three and we will sit at half past three.
28
29 THE HEARING ADJOURNED BRIEFLY AND THEN RESUMED

1 AS FOLLOWS:

2 CHAIRMAN: All right. I think I need to say something
3 now. I was asked to do this Tribunal in February of
4 this year and indeed we started hearings I think in
5 June and continued on through July. But the very first 15:38
6 thing that I did was that I sat alone without the
7 advice of counsel, apart from Ms. Leader, who was on
8 board at that stage, and I made a statement in the two
9 official languages of the State asking for cooperation,
10 and in particular, thinking, perhaps naively, that this 15:38
11 was going to be the most efficient tribunal that had
12 been run for a number of years, I asked for people who
13 actually knew things relevant to the terms of reference
14 to write to the Tribunal and tell us what they knew.
15 Now, some people did. Appreciating as well that as 15:38
16 time goes on, certain issues crystallise as being of
17 importance, if you like, a pivot in a case, it has been
18 pretty clear, it seems to me, for the last couple of
19 weeks that one of the important pivots in this case
20 from which something perhaps might be made in terms of 15:39
21 the book being thrown at Garda Harrison in consequence
22 of the statement made on 6th October, was the 8th
23 October 2013 meeting. Now, I, of course, have no idea
24 as to whether there was a decision to throw the book at
25 Garda Keith Harrison or if that happened, whether it 15:39
26 was unjustifiable in the context. Just as, at this
27 stage, having heard some of the evidence, I have
28 absolutely no idea until we come to the end of matters
29 and the matter has been considered as to how the

1 statement on 6th October 2013 was taken, or indeed as
2 to the veracity or otherwise of that statement in the
3 context of the events that stretched back at that point
4 about three years but focusing in particular on events
5 which occurred in April, August and on the 28th 15:40
6 September and on other dates. But it has been
7 completely clear, as I said, that this conference on
8 8th October 2013, when there was a reference to GSOC
9 under section 102 of the Garda Act, which refers to
10 death or serious injury to a person, was made, and 15:40
11 where also there was a reference to Tusla/HSE
12 authorities, and, following on, it seems, later, where
13 there was a reference indeed to discipline and also the
14 start of a criminal investigation, was a serious and a
15 pivotal point. Now, I know that. The Garda 15:41
16 Commissioner is represented here, they know that. And
17 today, for the first time, we have a reference to
18 Assistant Commissioner Kenny somehow being consulted in
19 relation to this and B Branch being consulted in
20 relation to this, that is to say Superintendent 15:41
21 O'Loughlin. There should have been reference to that
22 in the statement, I believe, of Chief Superintendent
23 McGinn, possibly - if he remembered it - in
24 Superintendent McGovern's own statement, I don't know,
25 but it's not there, and we should also have had, in 15:41
26 consequence of what the Tribunal asked for in February,
27 a statement from Assistant Commissioner Kenny relevant
28 to this and a statement from B Branch relevant to this,
29 and we don't. And we should have had.

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Now, that's not the Tribunal's fault. The Tribunal has asked for these things and, frankly, I can think at the moment of no excuse why they haven't happened. I mentioned earlier in dialogue with Mr. Harty, who has properly drawn this to my attention, that of course during the course of cases, be they criminal or civil, from time to time documents crop up and quite often perhaps in the past, courts in this country have made too much in relation to them.

15:42

15:42

Now, whether it be the case that it is possible to say that a conspiracy in relation to Garda Harrison was widely promulgated as and of the meeting of 8th of October, whether it went back to an earlier date or not, again I have no idea but that certainly has been the focus of inquiries over the course of the last two to three weeks, and therefore, this matter is actually of importance.

15:43

15:43

So what happened here in relation to this document? Well, Mr. Power has said that this particular diary entry was given to the Tribunal in June. One of the difficulties that we have is that until such time as things are actually typed up, that they are not searchable on our computer system. I know certain other computer systems make handwriting entries searchable, for instance the National Archives website, but they are searchable in consequence only of a vast

15:43

1 amount of work that is put in actually typing things
2 into recognisable form so the handwriting comes up, and
3 that was done in relation to, for instance, the 1901
4 and 1911 census by members of the Church of Latter-Day
5 Saints, otherwise known as the Mormons. It required a 15:44
6 huge amount of manpower that the National Archives
7 weren't in a position to put in. We are in the same
8 position, though we are not complaining about it. We
9 seem to have had this document, but I am having
10 inquiries made overnight, and I don't know why it 15:44
11 didn't come up, but, again, I can't find that out in
12 the course of the last 15 to 20 minutes, but certainly
13 a complaint in relation to it is valid.

14
15 So now the question is, what can I do in relation to 15:44
16 it. Well, the duty that is cast on me, and on me
17 alone, in relation to this matter, by the Oireachtas,
18 is to investigate contacts between members of An Garda
19 Síochána and Tusla in relation to Garda Keith Harrison.
20 Now, a reference was made to Tusla, that is to say a 15:44
21 formal reference, in consequence of this conference of
22 the 8th of October 2013. As to what the motivation of
23 the Garda Síochána was, is, of course, important, very
24 important. We have heard from the Tusla witnesses, but
25 we are not yet finished hearing from the Garda Síochána 15:45
26 witnesses, and I don't know where the evidence is going
27 to go.

28
29 what is certain to me is that this should have been

1 referred to, and I have said this earlier, possibly in
2 Superintendent McGovern's statement - I am not going to
3 ascribe blame to anybody at this stage - probably in
4 Chief Superintendent McGinn's statement. It's not
5 there referenced. And in addition to that, I am 15:45
6 absolutely certain that the Garda Commissioner, in
7 consequence of this Tribunal asking for their
8 assistance as and from February, should have caused a
9 statement to be taken in relation to this from
10 Assistant Commissioner Kenny and from Superintendent 15:45
11 O'Loughlin.

12
13 So what I am going to do now is the following:

14
15 Firstly, I am going to adjourn overnight because we 15:45
16 have to.

17
18 Secondly, I am going to make inquiries as to this
19 document and as to whether there is anything else that
20 could possibly be there in handwriting that might be 15:46
21 referable. Now, that search is going to be made.

22
23 And, in addition, I am requiring Assistant Commissioner
24 Kenny to have a statement available to the Tribunal at
25 10 o'clock tomorrow morning and Superintendent 15:46
26 O'Loughlin of B Branch in Garda Headquarters to have a
27 statement available to the Tribunal at 10 o'clock
28 tomorrow morning and I am also asking for an additional
29 statement from Chief Superintendent McGinn in relation

1 to this particular issue. And although it's
2 interrupting the evidence of Superintendent Eugene
3 McGovern, Superintendent McGovern, who is now giving
4 evidence, I am going to ask him if he has a
5 recollection in consequence of this to make an
6 additional statement. 15:47

7
8 Can I just emphasise one thing, please, and that is
9 this: As I said to Mr. Harty when he made the
10 submissions, which have properly drawn attention to 15:47
11 this matter, I tend to go for the conspiracy theory
12 only when the chaos theory has been outruled, but this
13 is not a case of the Tribunal now ascribing blame to
14 anybody, but it is a case of the Tribunal blowing
15 figuratively a bugle as loud as it possibly can to ask 15:47
16 people to just wake up and start helping us, and, in
17 blowing that bugle, I am not saying that there has been
18 any concealment, any deviousness, any conspiracy, but
19 what I am saying is that things could have been done a
20 lot better and they ought to be done now. 15:48

21
22 Now, in the event that things aren't available to me at
23 10 o'clock tomorrow morning, it may be necessary for me
24 to say something else. For the moment, that is all I
25 am going to say, and I am not going to hear any 15:48
26 submissions now, and I am going to sit again at
27 10 o'clock in the morning.

28 MR. POWER: Before you rise, Chairperson, if I might
29 make one clarification --

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CHAIRMAN: No.

MR. POWER: -- as to the name of Superintendent
O'Loughlin.

THE HEARING WAS THEN ADJOURNED TO THURSDAY, 5TH OCTOBER
2017 AT 10:00AM

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